

1 Colloquy

2 Said well, payments are being made, we'll put it off. We'll  
3 put it off. Never until April 23rd was there ever request for  
4 an accounting. And that was in the context of the flood  
5 insurance.

6 THE COURT: Mr. Bart, you know, this is all, like --

7 MR. BART: I know. But I mean --

8 THE COURT: I mean, I sit here week after week and  
9 lawyers tell me things and, you know, I do --

10 MR. BART: There's a record now, however.

11 THE COURT: -- what I have. Okay.

12 MR. BART: There is a record. I could put it to you  
13 in written form.

14 THE COURT: The bottom line from my perspective is  
15 that I just want to know when a lawyer stands up in court and  
16 says, I want to continue this, I can't get a document. I want  
17 to know why. I want to be able to move these cases.

18 MR. BART: Well, what will make you accept his  
19 testimony --

20 THE COURT: Accept whose testimony --

21 MR. BART: -- one way or the other in these  
22 proceedings that he didn't -- you know, he didn't  
23 intentionally make that statement or make that up or he didn't  
24 understand that what you had said in the May hearing was that  
25 he was to provide an accounting. I don't know who -- I mean,

1 Colloquy

2 I will provide any witness that the trustee wants. I mean, I  
3 don't know who that is. Because I did present Mr. Fitzgibbons  
4 and he testified precisely to that point.

5 MR. CONWAY: Your Honor, that was precisely why I  
6 wanted to do the discovery, to not take up judicial time. The  
7 limited amount of time all the parties had --

8 MR. BART: I'm happy to do it --

9 MR. CONWAY: -- and I think I know what happened. I  
10 think that there was a history and a payoff ordered. I think  
11 it was received before the June 5th hearing. And I think Mr.  
12 Fitzgibbon didn't know it.

13 MR. BART: And, Your Honor, I don't --

14 MR. CONWAY: And I think that if someone from the  
15 Udren who has used NewTrak and is familiar with NewTrak system  
16 gets up and testifies they'll tell you that they had it. Mr.  
17 Fitzgibbons just didn't know.

18 THE COURT: Well, then that supports what you've  
19 said.

20 MR. BART: Essentially.

21 MR. CONWAY: And, you know, I got to get to  
22 discovery. And I got to get it without my hands tied so I  
23 can --

24 MR. CASH: Your Honor, that would seem to take us  
25 out of the mix here. They think that somebody ordered it.

1 Colloquy

2 They think they got it. It has nothing to do with us anymore.

3 And, you know, we're big on the Bible in Texas. As Moses

4 said, just set my people free. We're --

5 THE COURT: Well, so you think, basically, that what

6 they're contending which is Mr. Fitzgibbon just didn't know

7 what he had? See, the --

8 MR. CONWAY: See, my hands are tied. I can't tell

9 you everything because I'm under confidentiality.

10 THE COURT: I know. I know. Well, maybe, maybe

11 then -- if your goal at the end is to --

12 MR. CASH: Confidentiality with who, Your Honor? He

13 says he has confidentiality. Well, Mr. McKuhn says he has

14 confidentiality --

15 MR. CONWAY: Under the Court's order. I can't

16 present to the Court what's in this confidential documents

17 I've seen.

18 MR. CASH: The ones from us?

19 MR. CONWAY: Yeah.

20 THE COURT: I thought -- no, no, no.

21 MR. EISENBERG: Well, no. One was just marked.

22 MR. CASH: The Court's clearly within -

23 THE COURT: No, no, no. I mean --

24 MR. CASH: -- the cone of silence.

25 THE COURT: The issue was that it couldn't be used

1 Colloquy

2 for anything other than this proceeding. That's where I  
3 thought we were going.

4 MR. BART: Yeah. That was my understanding.

5 MR. CASH: Your Honor, they have --

6 MR. BART: They could have used what they presented.

7 MR. CASH: I would never have implied that a Court  
8 would be outside of the confidentiality cone of silence.

9 THE COURT: I mean, what's the point? What's the  
10 point? I mean --

11 MR. CONWAY: There is --

12 MR. CASH: The point would be competitors have been  
13 at every one of these hearings.

14 MR. CONWAY: There is in the NewTrak pages that they  
15 gave to us a report where HSB on June the 3rd sends them a  
16 payoff.

17 MR. EISENBERG: Your Honor, I think it would be  
18 easier, I know Mr. Mulchay is here and observing and the  
19 confidentiality would be easier maybe if he's excused and  
20 there could be the discussion.

21 THE COURT: If that's -- throw Mr. Mulchay out?

22 MR. CASH: Yes.

23 MR. EISENBERG: Unfortunately, I'd like him here  
24 but -- but it resolves the confidentiality piece because  
25 everybody here is subject to the confidentiality order.

1 Colloquy

2 MR. BART: Or subject him to it.

3 THE COURT: Well --

4 MR. EISENBERG: Which I don't think --

5 MR. MULCHAY: I volunteer to leave if --

6 THE COURT: Fascinating as this may be, Mr. Mulchay,  
7 for the book that you are writing, he's actually -- you know,  
8 just like when I fall I have to disclose that he's going to be  
9 writing a book and it may involve me. I just made that up. I  
10 get silly after 5:30.

11 MR. CONWAY: We still have issues with the way the  
12 Udren firm handled this vis-a-vis NewTrak, vis-a-vis HSBC.  
13 And with HSBC -- I mean, that is the beginning and the end of  
14 it. But I can tell you if you want to know what happened to  
15 the payoff, they had it.

16 THE COURT: And who --

17 MR. CONWAY: They had it on June the 3rd. But if --  
18 according to the notes from the NewTrak system that I've seen.

19 THE COURT: Well, the -- Mr. -- why don't you excuse  
20 yourself, Mr. Mulchay and let's go off the record. And let's  
21 go off the record.

22 (Court is adjourned)

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, court-approved transcriber, do  
hereby certify the foregoing is a true and correct transcript  
from the official electronic sound recording of the  
proceedings in the above-entitled matter.

Lisa Bar-Leib

October 27, 2008

LISA BAR-LEIB

DATE



A	71:23	88:16	110:3,10,10,11	ANGELA 1:4
<b>ability</b> 10:13 66:23 67:2 69:14	<b>accessibility</b> 69:24 <b>accessible</b> 106:16	<b>adds</b> 44:23 <b>adequate</b> 117:21	110:16 111:24 112:5,12 113:6	<b>answer</b> 55:15 70:7 98:4,9 100:3,13
<b>able</b> 6:23 11:11,13 14:10 33:15	<b>accessing</b> 20:4 48:21 70:2	<b>adjourned</b> 152:22 <b>admin</b> 136:20	113:16 114:2,7 114:15 117:19	103:21 108:6 112:24 113:13
<b>above-entitled</b> 53:17 55:10 58:2	<b>accommodate</b> 75:8 147:25	137:16,18 <b>administering</b>	118:11 119:5,11 119:20 121:6	118:8,8 120:21 120:24 122:19,21
<b>58:7,8</b> 101:21,23 102:5 107:24	<b>accord</b> 123:19 <b>account</b> 50:6 67:23	137:19,21 <b>administration</b>	129:11 135:21 136:24,25 137:2	127:18 129:8 132:12,14 133:4
<b>108:2</b> 127:18 148:17	71:8 74:15 <b>accounting</b> 148:4	122:7 <b>administrative</b>	140:11 <b>ahead</b> 19:6 24:11	133:7,18,19 135:7 146:10
<b>153:6</b> <b>absolutely</b> 73:7	148:25 <b>accounts</b> 65:3	78:9 95:21 96:4 96:12,12 137:7	36:5 48:6 99:7 131:9	<b>answered</b> 103:13 104:24 135:16
<b>86:21</b> 121:21,21 126:18 133:4,8	124:3 <b>accuracy</b> 130:14	<b>admitted</b> 89:23,25 <b>ado</b> 104:19	<b>aided</b> 8:20 <b>aids</b> 91:24	<b>answering</b> 120:3 <b>answers</b> 18:16 45:5
<b>accept</b> 27:14 63:13 98:6 126:12	<b>accurate</b> 122:10 <b>acknowledged</b>	<b>adopted</b> 124:19 <b>advance</b> 78:9 81:2	<b>albeit</b> 136:25 <b>allocated</b> 8:12	122:23 <b>anybody</b> 4:12
<b>148:18,20</b> <b>acceptable</b> 124:4	73:11,12 <b>acknowledging</b>	<b>advantages</b> 24:3 <b>adversarial</b> 103:14	<b>allow</b> 8:11 50:13 51:6 52:16 55:2	71:23 77:11 86:13,15
<b>accepted</b> 91:23 133:24	12:10 <b>act</b> 107:12	118:7 <b>adverse</b> 107:15	64:24 76:12 124:12,13 125:5	<b>anymore</b> 145:10 150:2
<b>accepting</b> 91:22 <b>access</b> 7:6 10:12	<b>acted</b> 123:4 <b>acting</b> 97:7	<b>advice</b> 74:8 <b>advise</b> 63:12	<b>allowable</b> 126:11 <b>allowed</b> 109:3	<b>anyway</b> 146:12 <b>anyways</b> 6:19
<b>11:23</b> 14:24 15:6 18:2 24:24 25:13	<b>action</b> 14:18 39:13 74:16 147:19	<b>afar</b> 146:17 <b>affect</b> 26:25	131:6 <b>allowing</b> 49:4	<b>apologize</b> 29:17 78:24
<b>31:5</b> 33:14 36:11 36:14 37:6 43:5	<b>actions</b> 75:7 111:25 123:8	<b>affidavit</b> 61:11,13 <b>afternoon</b> 4:3,4,9	51:21 57:12 65:13	<b>APPEARANCES</b> 1:11 2:1
<b>46:3</b> 48:19 49:19 49:22 51:15,18	<b>active</b> 7:20 10:7 24:24 51:12	4:11 5:24 6:3 89:13	<b>allows</b> 13:21 25:4 52:18,25 54:18	<b>appeared</b> 36:23 <b>appears</b> 9:23 11:5
<b>52:8,10,19</b> 53:9 53:10,22 54:16	<b>acts</b> 11:24 <b>actual</b> 26:11 35:2	<b>agent</b> 113:7,17,19 113:24	54:20 57:6 58:21 91:25	18:3 25:3 36:16 53:13 56:15
<b>54:23,24</b> 57:10 57:25 58:2 65:2,7	35:24 131:11 <b>add</b> 53:25 54:3,4,6	<b>agents</b> 123:2 <b>ago</b> 38:25 73:18	<b>all-in-one</b> 32:24 <b>alphabet</b> 29:19	74:24 <b>applicable</b> 52:18
<b>65:9,11,14,23,24</b> 66:9,12,18 67:10	54:10 56:18 108:19	84:10 124:3 <b>agree</b> 16:19 31:17	<b>amendments</b> 95:6 <b>amount</b> 52:14	52:21 <b>application</b> 6:15
<b>67:14,14,15,23</b> 68:10,11,22	<b>added</b> 11:17 45:11 52:24 53:25	31:18 104:22 135:15 143:22,25	130:25 136:19 149:7	8:25 10:9,10 15:5 36:10 49:19
<b>70:11,12</b> 71:19 72:6,12 73:5,20	54:12 131:18 <b>additional</b> 11:10	<b>agreed</b> 4:10 143:8 <b>agreement</b> 3:6 4:17	<b>amounts</b> 51:24 140:8	50:24 54:20 56:2 58:9 64:24 74:20
<b>74:18,19,21</b> 78:8 84:11 126:16	11:15,16,18 20:6 48:11	4:19,19,21 31:6 32:19,20 87:22	<b>analogies</b> 68:23 <b>analogize</b> 71:4	78:5,23 <b>apply</b> 138:2
<b>127:13,14</b> 128:13 <b>accessed</b> 10:13	<b>address</b> 11:10,16 89:2,4,6	88:2,5,8,9 93:16 93:18 94:10,12	<b>analogy</b> 31:23 33:19 67:19	<b>appreciate</b> 135:18 <b>appreciated</b>
<b>11:6</b> 77:17 132:10	<b>addressed</b> 11:19 12:22	94:15,16,21,24 95:6,10 109:12	<b>analysis</b> 8:23 <b>and/or</b> 14:21,23	145:23 <b>approach</b> 116:5
<b>accesses</b> 17:22	<b>addressing</b> 47:21	109:14,16,21	51:12 53:4	<b>appropriate</b> 8:12



14:4 17:23 55:2	75:24 76:5 97:8	45:16 46:20 48:4	audit 34:24 74:17	98:21
59:16	104:6 106:23	48:18 52:6,19	audits 34:18	<b>backtrack</b> 95:12
<b>appropriately</b>	107:6,7 111:6	53:4 54:22 55:5	<b>August</b> 94:11	<b>bad</b> 35:10
123:4	112:18 118:4	56:8,14 57:9,15	<b>AUST</b> 1:19	<b>BAKER</b> 1:19
<b>approval</b> 20:4 37:6	119:16 127:10	58:10,14,15,22	<b>authority</b> 22:7,21	28:12,22 39:16
37:8	129:12 132:23	58:23 59:2 61:10	45:15	39:21 42:2,7,9
<b>approve</b> 19:24	<b>asks</b> 41:21 53:15	62:6,7,9 63:17	<b>authorization</b>	43:16 44:8 66:12
20:11,23,23	<b>aspects</b> 79:6	65:16 66:19,22	21:19 22:10,11	66:15,18,23
21:23 23:17	<b>assembly</b> 10:20	67:4 68:2 69:19	60:5	69:17,22 73:4,9
24:14,15 37:15	<b>assigned</b> 51:9	70:2 72:16,24	<b>authorized</b> 58:19	73:14 75:10,16
37:16,16 39:24	96:21 127:25	75:11,17,17	59:17 60:4	75:24 77:15 82:2
40:11 49:17	128:2,7	76:20 77:16	<b>auto</b> 44:3 45:13	82:9,12,16,18
50:12	<b>assignments</b> 8:14	79:23,24 80:4,7	<b>automated</b> 8:10	84:6
<b>approved</b> 18:12	<b>assist</b> 91:16	81:5,8,12 84:7,22	30:5 77:10	<b>Baker's</b> 71:2
24:5,6,16,18,20	<b>assistance</b> 125:13	85:6,19 89:20	<b>automatic</b> 27:14	<b>ball</b> 123:6
24:21 33:10	<b>assistant</b> 125:12	101:6,23 105:23	<b>automatically</b> 9:20	<b>bank</b> 50:5,5 63:7,9
37:17,22,22	<b>assisted</b> 92:6	105:25 106:2,21	19:10 30:15 66:2	109:20
38:24 39:9,23	<b>associate</b> 28:14,16	107:19,21 113:3	85:10	<b>bankruptcies</b>
40:22 41:9,12	28:19 127:2	125:7 128:7	<b>automation</b> 71:11	14:20 90:20
45:21,23,23 46:9	<b>associated</b> 12:9	131:25 132:23	71:15	<b>bankruptcy</b> 1:1,5
47:16,19 48:15	14:24 25:13	136:19 137:15	<b>available</b> 9:21 10:5	1:10 8:9 15:22,23
50:16	71:19 74:15,20	139:20	11:4,19 12:2 32:8	15:25 16:4,14,17
<b>approves</b> 14:23	80:15 82:4	<b>attorneys</b> 12:15	47:16 49:20 53:9	81:19 97:3,8
<b>approving</b> 26:14	<b>associates</b> 74:25	22:7 23:7 29:5,6	53:12 56:5,22	99:20,25 100:6
41:14	<b>association</b> 74:17	30:16 32:6 33:24	58:4 74:22 78:7	100:14,19 101:10
<b>approximately</b>	<b>assume</b> 14:12	35:18 37:14	<b>awaited</b> 87:6	101:14 117:19
95:20	63:11 71:10	42:17 44:7,13,19	<b>awaiting</b> 20:4	121:23 122:8
<b>April</b> 148:3	88:17 129:20	48:12 50:13	<b>aware</b> 52:2 88:4,13	<b>bar</b> 44:5 62:22
<b>area</b> 10:21 27:23	135:19 137:19	68:24 69:2 76:7	118:11,15,23,23	90:5 104:12
50:15 59:5	<b>assuming</b> 22:11	76:11 80:12	119:3,5,7,11,18	<b>barely</b> 94:3
<b>areas</b> 9:20 78:11	61:17 126:5	84:14 85:3 95:13	119:20 127:2	<b>Bart</b> 1:12 4:16 5:8
78:13	<b>asterisk</b> 137:24	97:5,24 98:10	<b>B</b>	5:15,17,21 25:23
<b>argument</b> 104:6	138:3	101:9,11,14,16	<b>b</b> 117:7,8,13	88:11,13 89:12
<b>arises</b> 15:5 36:11	<b>attached</b> 46:7	101:17,18,20	138:18 140:10	89:14,14 92:9,10
<b>articulate</b> 131:10	87:24	103:12 106:6	<b>back</b> 4:23 23:17	92:13,15,18,22
<b>ascertain</b> 71:13	<b>attack</b> 111:8	107:9,16,22,25	45:6 47:7,13	93:5,10,13,14,22
131:9,11	<b>attend</b> 117:20	108:4 123:2	60:22 61:25 62:3	93:25 94:7,20,22
<b>asked</b> 5:9,10 39:19	<b>attendant</b> 11:17	126:16 127:13	62:5 63:3,5 64:25	95:2,4,5 96:24
40:12,20 43:21	<b>attorney</b> 8:2 11:17	128:6 129:18,23	71:9 75:10 91:19	99:8,9 101:3
46:24 47:12	14:14 15:4,24	<b>attorney's</b> 20:10	101:22 102:6	102:23 103:21,23
50:21 63:2 68:6	16:7 17:2,3 19:8	25:19 43:24 50:3	106:19 135:13	103:25 104:4,8
72:9,14 79:9	21:3,5,15,18 23:3	52:7 56:21 58:6	147:4	104:14,25 105:4
87:22 100:11	25:16,18 28:22	<b>attorney/client</b>	<b>background</b> 89:17	105:6,10,12,15
107:17 132:19	28:25 29:2 30:21	72:15 75:18	90:3 98:19 99:10	105:16 108:15,23
<b>asking</b> 46:11 63:6	30:25 31:5 33:8	76:11	<b>backgrounds</b>	114:24 115:7,11
68:4 73:9,10	36:9 38:8 40:6	<b>Audio</b> 2:7		115:14,21 116:4

116:6,20 118:2	<b>beneficial</b> 91:15	<b>breakdown</b> 52:24	<b>capped</b> 143:25	67:6,20 70:6,8
122:9 129:22,24	<b>benefit</b> 135:12	129:23 130:19	<b>car</b> 4:20	72:18 73:7,15
130:2,8,24	<b>best</b> 55:21 96:10	131:13	<b>care</b> 39:7 79:12	78:24 79:11
131:10 132:2,12	122:19 124:20,21	<b>breaks</b> 69:18	94:23 100:10	82:21,24 83:4,6
132:14,16 135:25	<b>better</b> 6:23,24	<b>briefly</b> 90:2	114:6,10	84:24 111:7,13
141:7,9 147:8,14	33:16,17 42:16	<b>bring</b> 5:10,11	<b>careful</b> 60:6,12	111:17,23 141:25
147:18 148:6,7	79:3 93:20 124:8	22:21 145:7,7,7	<b>case</b> 10:8,11,15,17	142:4,13,16
148:10,12,18,21	124:9 125:3,19	<b>brochure</b> 125:2	11:2,21 12:8,16	143:2,7,11,14,18
149:8,13,20	126:10 147:11	<b>broken</b> 10:18	14:2 17:4,21	143:20 144:10,13
151:4,6 152:2	<b>beyond</b> 82:24	128:4,6 132:24	19:14 22:19	149:24 150:12,18
<b>Bar-Leib</b> 153:3,11	126:23,24 143:25	<b>brought</b> 6:13	24:24 26:21,21	150:22,24 151:5
<b>based</b> 18:8 20:12	<b>Bible</b> 88:21 150:3	146:17	26:24 27:6,7	151:7,12,22
30:15 36:21	<b>big</b> 74:10 150:3	<b>Browse</b> 54:5	36:12 37:20 38:3	<b>Cash's</b> 31:15
48:15 65:2 79:24	<b>biggest</b> 77:14	<b>browsed</b> 54:9	43:19 46:3 47:25	<b>category</b> 77:7
85:21 114:5	<b>bill</b> 84:25 85:4,12	<b>bubble</b> 47:20	48:8,21 49:5	<b>cause</b> 17:9 37:19
<b>basic</b> 51:22 136:16	85:13,17 137:10	<b>built</b> 71:14,15	50:17 51:17 53:8	47:8 59:11 68:3
<b>basically</b> 15:21	141:14 144:5	141:23	53:11 56:18	99:25 106:13
22:7 33:7 39:6	<b>billed</b> 136:19,23	<b>bulk</b> 60:2	59:24 74:10	112:16 124:20
80:16 87:25	138:19 140:24	<b>business</b> 43:7	101:5 105:20	125:5 126:13
92:10 104:18	141:11	90:17,23	109:8,9 111:8,25	130:3 145:15
122:22 132:8	<b>billing</b> 140:2	<b>button</b> 26:18,21,25	113:4 122:8	<b>center</b> 1:13 85:17
150:5	<b>bills</b> 84:22 137:11	50:8 56:18	126:20 128:2,3	<b>cents</b> 83:13 129:12
<b>basis</b> 7:22 34:25	<b>bit</b> 13:18 96:11	<b>bypass</b> 21:21	128:14 129:18	<b>certain</b> 13:10,12
44:17 64:17 92:7	100:12 124:11		131:7 134:15,23	20:23 22:5 27:18
<b>Bates</b> 93:16 138:18	<b>bi-items</b> 78:7	<b>C</b>	134:24 145:4	51:25 58:17,17
<b>Bates-stamped</b>	<b>blinking</b> 44:25	<b>C</b> 1:4 4:2 153:1,1	147:22	83:16 97:16
116:19,25	<b>blocks</b> 105:19	<b>calculates</b> 85:10	<b>cases</b> 26:19 63:3	105:21 119:7
<b>beginning</b> 82:6	<b>blurred</b> 136:12	<b>calculations</b> 8:20	117:19 148:17	124:4 134:14,16
99:16 109:19	<b>board</b> 81:20,21	<b>calendar</b> 43:21,22	<b>Cash</b> 2:1 4:12 5:25	134:22
122:17 146:11	<b>body</b> 65:20	44:3	6:4,10 9:10,13	<b>certainly</b> 67:10
152:13	<b>bonus</b> 45:11	<b>call</b> 6:6 23:24 24:7	12:24 13:6,11	73:22 87:5
<b>begins</b> 99:3	<b>book</b> 152:7,9	29:4 30:11 41:3,6	16:10,18,24,25	102:10 109:13,15
<b>behalf</b> 89:15 106:4	<b>borrowers</b> 11:9	59:23 105:22	18:15 19:3,7,12	127:9 144:20,23
121:12,12 135:20	29:19,20	106:20,21 127:16	19:17,20 20:15	<b>certificates</b> 98:14
<b>behold</b> 97:12	<b>borrower's</b> 11:14	135:13 137:18	20:18,22 21:11	<b>certify</b> 153:4
<b>belabor</b> 91:12	<b>bottom</b> 116:19	141:20	21:16,20 22:13	<b>change</b> 6:18 13:17
<b>believe</b> 39:5,23	147:12 148:14	<b>called</b> 45:8 135:18	22:17 23:3,6,10	18:13 35:18,20
94:16 95:8,15	<b>box</b> 8:24 10:4,17	137:16 139:18	23:21 25:25 26:3	35:21 39:5
100:15 101:12	13:24 17:21	<b>calls</b> 45:7	26:8,11,16 27:3	140:15
107:14 108:17	41:21 48:21	<b>campus</b> 90:9	27:13 28:3,6,8	<b>changed</b> 49:14
109:18 112:15	51:17 68:14	<b>cap</b> 144:2	31:13,23 35:4,10	<b>changes</b> 10:5 49:13
114:18 115:7,23	<b>break</b> 29:24 42:18	<b>capabilities</b> 126:23	35:14 38:4 39:20	140:10
127:5,6 140:9	42:18 43:2,2	126:24	41:3,5 42:6,8	<b>changing</b> 47:19
144:22	44:16 86:16 98:9	<b>capable</b> 127:20,22	44:22 46:8,14,25	<b>Chapter</b> 1:3
<b>believed</b> 103:19	129:18 131:17	<b>capacity</b> 42:20	47:4 48:12 58:25	<b>charge</b> 82:22 83:9
146:12	132:19,22	103:17	59:10,12 64:16	84:5,5,6,8 113:4

133:23,25 134:2	<b>clerk</b> 4:5 58:18	114:11 119:8	<b>code</b> 30:13,15,16	152:1
138:21,23 139:4	86:23 87:2 88:20	120:8,8,23,23,23	30:17,17	<b>column</b> 137:13
139:6,7,10,21,23	88:23 89:2,5,7,10	120:24 121:2,3,4	<b>coded</b> 30:12	139:7,10
140:6,8	92:17,25 93:3	125:7,7,10	<b>codes</b> 29:24 30:4,9	<b>columns</b> 136:18
<b>charged</b> 84:19	94:25 95:3	127:16 136:19,19	<b>Codilis</b> 1:16	138:19
109:22 129:10,13	<b>click</b> 11:11 24:15	136:24 137:6	<b>Cohen</b> 130:9	<b>come</b> 4:22,23 13:17
<b>charges</b> 83:10	36:22 37:16	138:6,10,13,19	<b>coincidence</b> 101:12	19:8 23:11,17
129:19 130:18,20	42:10 46:7,10	139:8,9,20 140:2	<b>collected</b> 10:9	25:6 30:22 66:3
130:25 131:12,15	49:3,12 53:14	140:6,8,11,16,24	<b>college</b> 90:2	72:17,23 85:11
133:2,17,21	54:5 65:20 83:9	141:11,12,14,15	<b>Colloquy</b> 4:1 5:1	92:3 94:12 95:16
<b>charging</b> 143:13	83:10,11 91:19	141:16,17 142:22	6:1 7:1 8:1 9:1	96:14,15 106:5
<b>Charlene</b> 28:8	<b>clicking</b> 9:22 10:3	143:11,17,23	10:1 11:1 12:1	107:8 123:10
<b>chases</b> 36:13	20:7 24:25 25:2,5	144:2	13:1 14:1 15:1	131:20,21 135:4
<b>check</b> 13:24 56:8	37:10 46:4,5 50:8	<b>clients</b> 7:10,15,17	16:1 17:1 18:1	147:4
58:7	52:13,15,18	29:18 30:23 32:9	19:1 20:1 21:1	<b>comes</b> 72:19 96:16
<b>checked</b> 46:25	56:15	32:14 33:24	22:1 23:1 24:1	96:22 97:8 98:22
<b>Cherry</b> 89:8	<b>clicks</b> 40:6 47:15	34:21 42:16 44:6	25:1 26:1 27:1	101:8 106:19
<b>Cheryl</b> 141:20	49:24 66:4	44:13,24 60:8	28:1 29:1 30:1	121:5 147:4
<b>Chestnut</b> 1:21	<b>client</b> 5:9 8:3 12:25	62:4 84:16 91:14	31:1 32:1 33:1	<b>comfortable</b> 32:16
<b>choice</b> 35:19	13:7,9,11,15	91:17 96:16	34:1 35:1 36:1	102:11
120:25	14:13,21,22 18:7	105:22 110:18	37:1 38:1 39:1	<b>coming</b> 4:17 12:2
<b>choose</b> 28:4 29:11	18:8 19:9,12	111:2,5 112:9	40:1 41:1 42:1	43:25 44:17,18
30:21,24 49:4,7	20:12,14,15,16	117:14 119:22	43:1 44:1 45:1	44:18 45:13
65:13 78:12	20:16,19,24	120:11,15,17	46:1 47:1 48:1	64:11 66:19
<b>chosen</b> 49:6	21:14,19 22:3,17	121:7,10,20	49:1 50:1 51:1	72:25 139:16
<b>clack</b> 91:19	22:24 23:20	124:22,23 126:12	52:1 53:1 54:1	146:17
<b>claim</b> 12:17,18,20	25:11,11,17,19	137:4	55:1 56:1 57:1	<b>commence</b> 5:24
13:2 17:6,8 35:8	29:2 30:16 31:15	<b>client's</b> 13:4 18:13	58:1 59:1 60:1	<b>comment</b> 18:4
35:10 58:18	32:6 36:21 39:23	19:25 21:13 29:8	61:1 62:1 63:1	33:20 36:16
59:15,19,25 60:9	42:7,11,17 43:12	30:17 37:3 43:23	64:1 65:1 66:1	47:12
62:19 129:17	43:17 44:9 45:16	49:16,18,23	67:1 68:1 69:1	<b>comments</b> 18:6
130:5,15,17,21	45:25 46:18,25	51:13 114:6	70:1 71:1 72:1	47:12,24 49:10
130:23 131:6,12	49:19 51:7,21	<b>client-generated</b>	73:1 74:1 75:1	51:25
131:19 132:6,9	52:12,18 53:3	119:10	76:1 77:1 78:1	<b>commission</b> 107:13
132:13,21	54:19 59:16	<b>close</b> 24:14 38:13	79:1 80:1 81:1	<b>committee</b> 13:14
<b>claims</b> 51:11 131:5	62:15 63:12	44:20 46:7,10,12	82:1 83:1 84:1	<b>common</b> 7:11 8:10
131:7	66:20,22 67:5,7,8	47:11,15,22,22	85:1 86:1 87:1	<b>communicate</b>
<b>clarifying</b> 111:16	67:8,9,12 68:2	53:21 85:5 135:5	88:1 134:1 135:1	75:14,16,17
<b>clarity</b> 47:19	69:20 70:3 72:13	135:17	136:1 137:1	104:20 121:3,4
<b>class</b> 90:7	72:16,24 75:11	<b>closed</b> 19:6 51:12	138:1 139:1	<b>communicating</b>
<b>clear</b> 104:21,22	75:16,17 76:4,19	54:13	140:1 141:1	76:14
134:7 147:23	77:16 84:23 92:2	<b>closer</b> 6:22 10:24	142:1 143:1	<b>communication</b>
<b>cleared</b> 18:20	105:19,24 106:21	15:3 36:8 57:22	144:1 145:1	38:5 59:11 75:10
<b>clearer</b> 136:6	109:8 111:20,21	<b>closes</b> 53:3	146:1 147:1	119:12
<b>clearly</b> 144:4	112:9 113:7,17	<b>closing</b> 77:6	148:1 149:1	<b>communications</b>
150:22	113:20,24 114:4	<b>CMECF</b> 19:5	150:1 151:1	69:19 70:2

126:20	<b>conduct</b> 91:16	<b>content</b> 35:5 53:20	116:11,14,21,23	<b>cost</b> 25:6 51:6
<b>companies</b> 22:5	<b>conducted</b> 7:20	73:24	117:4,6 118:9,10	52:25 79:5,7,16
65:14 125:15	90:17 134:23	<b>contention</b> 147:7	118:19,22 119:2	79:22 83:8
<b>company</b> 11:13	<b>cone</b> 150:24 151:8	<b>context</b> 74:4 90:20	119:24 120:3	133:21,23 141:24
19:15 29:2 31:14	<b>confidential</b> 10:14	148:4	121:16 122:18,25	<b>costly</b> 144:25 145:8
31:14 67:16 84:9	150:16	<b>contingencies</b>	123:4,16,19	146:18,19
90:13 133:22,23	<b>confidentiality</b>	23:25	125:25 126:8,15	<b>costs</b> 51:9,19,21
<b>compared</b> 34:5	150:9,12,13,14	<b>continuances</b> 22:6	128:19 130:11,14	52:9,19,20 79:5
<b>Compass</b> 71:5,7,8	151:8,19,24,25	<b>continue</b> 122:18	130:18,21 131:3	131:14,17,18,18
<b>compels</b> 18:23	<b>confirm</b> 56:10	134:8 148:16	131:11,17 132:18	131:20
<b>competency</b>	<b>confirmation</b>	<b>continued</b> 4:9	132:25 133:9,14	<b>counsel</b> 7:15,25
124:23	54:11	<b>contr</b> 80:9	134:5,7,11,14,20	16:12,12,14,14
<b>competent</b> 102:2	<b>conformed</b> 77:4	<b>contract</b> 29:9	134:22 135:24	27:22 28:15,18
134:8,20	<b>confused</b> 39:8	44:21 110:19,24	136:3 139:15	28:19 29:15
<b>competitors</b>	107:8	111:10,12,19	140:9 142:6,21	30:24 31:13,17
151:12	<b>connection</b> 121:22	115:21,23 116:16	143:16,19 144:16	32:15 35:20
<b>complete</b> 13:23,25	133:13	118:17 123:7,14	149:5,9,14,21	62:25 63:4,11
14:3,3,10,25	<b>consent</b> 8:5	123:20 135:7,20	150:8,15,19	93:8 145:6
15:22 24:13	<b>consequence</b> 86:8	135:21 140:5,6	151:11,14 152:11	147:24,25
25:14 43:24,25	<b>consider</b> 75:18	141:3,18 142:7	152:17	<b>counsels</b> 27:20
48:11 49:5 50:14	<b>consist</b> 7:10	143:3,6 144:3,5	<b>Conway's</b> 133:18	<b>count</b> 66:2 121:3
55:10,21 56:20	<b>consistent</b> 81:19,21	<b>contracts</b> 29:7	<b>copier</b> 133:22	<b>counter</b> 9:19,19
57:15,23 58:7	114:3 117:15	125:12 135:20	<b>copies</b> 34:21 73:19	<b>counters</b> 9:20
65:20 80:24 88:5	<b>constant</b> 44:4	<b>contradicts</b> 125:18	88:13 93:5	<b>counties</b> 106:13
<b>completed</b> 12:11	<b>constantly</b> 146:16	<b>control</b> 33:18 34:2	<b>copy</b> 47:25 55:4,5	<b>county</b> 29:24
14:5,8 33:8,10	<b>consuming</b> 146:15	34:5 35:5,21	93:6,20 94:20,22	106:12
43:22 44:4,5,5	146:20	<b>controls</b> 69:24	115:16 116:2	<b>couple</b> 79:4
48:22 49:9 55:23	<b>contact</b> 6:16 11:14	<b>cont'd</b> 2:1	138:5	<b>courier</b> 67:11,12
57:20 58:11 61:5	11:15 44:13	<b>convenient</b> 53:23	<b>Corp</b> 1:16	<b>course</b> 12:8 34:4
145:18	85:25 86:2	<b>conveniently</b> 17:25	<b>correct</b> 5:15 9:16	100:20
<b>completes</b> 55:8	<b>contacted</b> 8:3	36:13 54:2	12:19 13:6 15:6	<b>court</b> 1:1 4:3,6,15
<b>completing</b> 56:6,10	16:12	<b>Conway</b> 1:19 4:14	16:18 19:3 26:11	4:22 5:6,13,16,19
58:5	<b>contacts</b> 8:17	4:16 5:5 21:24	41:25 57:2 59:10	5:22 6:3,9,11,17
<b>completion</b> 14:6	11:12,16	22:2 26:12,23	69:5,7,21 70:25	6:20,22 9:4,8,12
56:16	<b>contain</b> 8:19 10:4	32:3,5 38:10,13	77:5,19 80:13	9:14 12:14,16,21
<b>compliance</b> 117:16	30:11 132:6	38:16 62:8,16	81:17 86:3 89:21	13:4,7,9,16,19
<b>comply</b> 117:17	<b>contained</b> 131:19	63:6 66:24 67:18	102:16 111:4,13	14:12 15:7,10,15
<b>comprehensive</b>	131:19	84:13,16,18,22	111:20 128:16	15:17,23 16:5,9
52:24	<b>containing</b> 13:25	86:17,20,25 87:3	132:7 153:4	16:16,19,22,24
<b>computer</b> 6:5	<b>contains</b> 9:18,19	87:7,10,14,17,19	<b>correspond</b> 65:13	17:11,14,16,18
30:14 127:24	10:19 37:8 55:8	87:21 88:9 93:6,7	<b>correspondence</b>	18:23 19:5,10,14
<b>concept</b> 102:6	56:7 75:2	93:11,21 94:3,23	65:7 141:18	19:19 20:13,17
<b>concerning</b> 89:18	<b>contemporaneous</b>	109:2,5,7 111:14	<b>correspondent</b>	20:21,25 21:6,9
<b>conclusion</b> 4:23	24:9	111:22 113:2,20	141:19	21:14,17,21,25
5:22 147:6	<b>contending</b> 150:6	114:21 115:13,18	<b>corresponding</b>	22:4,8,16 23:2,5
<b>conclusions</b> 105:7	<b>contends</b> 122:13	115:22 116:5,8	53:9	23:7,20 24:9,11

26:7,9 27:11,16	90:7,16,17 92:8	145:3,13,20,24	124:1 125:1	<b>day</b> 34:3 42:13,23
28:5,10,13,16,19	92:12,14,21,23	146:8,15 147:17	126:1 127:1	43:12 49:11,13
28:23 30:2,5,8,20	93:2,4,6,9,20,24	148:6,8,11,14,15	128:1 129:1	49:15 83:25 88:3
31:3,7,21,25 32:4	94:5 96:7,23,25	148:20 149:18	130:1 131:1	108:2,4,4 147:3
32:11,17,23 33:5	97:10,15,18,23	150:5,10,16,20	132:1 133:1	<b>days</b> 51:13 73:18
33:12,18,22 34:9	98:8,12,16,19	150:23,25 151:7	<b>CROSS-EXAMI...</b>	81:7 85:2,7
34:12,14,16,23	99:7,22 100:10	151:9,21 152:3,6	109:6	107:25 108:17
35:12 36:3,5	100:25 101:4,19	152:16,19,22	<b>cuff</b> 33:20	112:3
37:19 38:7,15,19	102:7 103:7,18	<b>courtroom</b> 4:17	<b>cumulative</b> 50:19	<b>DE</b> 2:6
39:8,12,22 40:3,7	103:22,24 104:2	82:19	<b>curious</b> 125:18	<b>deadlines</b> 12:17
40:10,15,18,22	104:6,9,12,15	<b>courts</b> 33:21 92:6	<b>current</b> 4:18,19,21	24:6 45:12
40:25 41:4,6,12	105:3,5,8,11,13	<b>Court's</b> 4:5 13:5	11:15 29:5 91:24	<b>deal</b> 93:10 108:5
41:16,18,23	106:10,15,18,20	87:2 122:25	115:16	144:3
42:20 43:5,7,9	107:2,5,10,11,14	150:15,22	<b>currently</b> 24:23	<b>dealings</b> 91:7
44:17 45:18	107:17 108:5,9	<b>court-approved</b>	37:9 90:10 95:14	<b>debtor</b> 133:2
46:16,23 47:3,9	108:12,25 109:4	153:3	<b>customizable</b>	<b>Debtors</b> 1:5
50:19,25 55:13	111:16 112:19,21	<b>cover</b> 46:23	42:17	<b>debtor's</b> 11:17
55:17 56:23 57:3	113:19,21 114:20	<b>covering</b> 78:11	<b>customized</b> 7:18	16:11 117:21
58:14 59:8,11,13	114:23,25 115:4	<b>cradle</b> 128:25	11:3	145:5 147:23
59:24 60:7,11,16	115:9,15,24	<b>cream</b> 99:14	<hr/> <b>D</b> <hr/>	<b>decide</b> 5:18 20:17
60:18,21,24 61:3	116:7,9,13,15,22	<b>create</b> 48:4 65:12	<b>d</b> 3:1 4:2 49:23	20:24 29:16 31:8
61:6,8,12,15,18	117:2,5 118:6,15	<b>created</b> 14:21	<b>daily</b> 7:22 92:7	42:22,25 43:3
61:20,23 62:2,6	118:20,25 120:3	25:10 38:18 75:3	<b>damages</b> 138:8	<b>decided</b> 7:25 15:18
63:16,19,22 64:3	121:13,19 122:11	<b>creates</b> 53:23	<b>data</b> 7:12,22 10:9	35:17 58:16
64:5,7,10,14,19	123:3,9,18,21	<b>credibly</b> 135:16	30:11 33:23 34:5	64:15 101:25
67:4,21 68:4,10	125:17,21,25	<b>Creditor</b> 1:12	35:24 55:8 56:15	<b>decides</b> 71:24
68:21 69:4,6,8,11	127:9,13 129:24	<b>creditors</b> 1:15	56:19 57:16,19	<b>deciding</b> 26:14,17
69:15 70:10,16	130:6,13,16,20	13:14 48:22 49:6	58:12 74:2	<b>decision</b> 26:20,22
70:18,20,22 71:2	130:22 131:2,8	50:14	<b>database</b> 33:9	26:24 27:2,4,14
71:22 72:3,10	131:16 132:5,13	<b>crime</b> 67:21	<b>date</b> 12:20 13:15	27:15 61:2
73:11,21 76:6,9	132:15,17,23	<b>criteria</b> 8:12 18:7	13:17 14:4,4,5,6	<b>dedicated</b> 10:12,21
76:17,22,25 77:4	133:10,15 134:10	20:23,24 26:18	14:6 43:10 44:4,5	<b>default</b> 7:13,16
77:6,8,11,20,22	134:12,19,21	26:22,24,25	44:6,17,18,18	36:19 53:6,24
78:16,18 79:2,3,4	135:2 136:5,7,10	27:18 30:3 35:16	45:9,9,9,9 48:23	54:14 55:15
79:12,17,19,21	136:15,18,22	36:20 50:12,22	49:8,11,13,14	<b>defensive</b> 64:14
80:2,6,10,12,14	137:9,13,15,18	<b>critical</b> 8:19 10:21	50:13,14 51:24	<b>defines</b> 87:25
80:18,21 81:2,8	137:21,23 138:9	36:19 53:6,24	62:22 74:6,7	<b>delay</b> 49:7,8
81:12,16,18,21	138:12,18,21,23	54:14	94:14 153:11	<b>delegate</b> 60:14
82:17 83:2,5,7,12	139:5,7,10,12,14	<b>Cross</b> 3:2 109:1	<b>dated</b> 94:10,11,16	<b>delegated</b> 14:22
83:15,20,23	139:25 140:4,19	110:1 111:1	115:25	25:12 26:18
84:21 85:3,6,10	140:21 141:3,5	112:1 113:1	<b>dates</b> 24:6 34:19,20	27:10 60:5 96:11
85:14,17,21,24	141:11,13,16,23	114:1 115:1	34:21,25 35:2	<b>delete</b> 66:6
86:4,8,11,13,19	142:2,5,9,11,14	116:1 117:1	43:21,22,22	<b>deleted</b> 66:10
86:21,24 87:5,8	142:25 143:5,10	118:1 119:1	97:16	<b>Deleting</b> 66:7
87:12,16,18,20	143:12 144:9,11	120:1 121:1	<b>date's</b> 72:25	<b>delineated</b> 80:9
88:4,8,10,12,15	144:14,17,24	122:1 123:1		<b>delivering</b> 7:6

<b>delusional</b> 120:20	<b>designation</b> 30:8	111:10	<b>displays</b> 9:24	147:12 150:16
<b>demand</b> 117:23	<b>designed</b> 55:7	<b>different</b> 5:18 6:6	<b>distribute</b> 29:19	<b>doing</b> 6:23 9:4 17:2
<b>demanded</b> 135:4	<b>desk</b> 20:18	27:3 28:24 41:13	<b>distributed</b> 8:8	26:7 33:4 41:18
<b>demo</b> 38:17 49:10	<b>desktop</b> 6:14 7:9	48:20 59:15 60:9	18:6 29:17	41:19 43:14,14
50:4 52:12	7:23 29:3,7 30:14	62:25 68:25	<b>distributes</b> 30:18	86:9 121:17
<b>demonstration</b>	30:21,25 42:10	69:18 72:18 75:8	<b>District</b> 1:1 81:9	124:16 128:25
4:11 32:25 91:18	42:16 71:16	76:22 78:13 91:3	<b>division</b> 28:15,18	139:20
122:15	74:22 78:4	99:12 106:14,19	28:19	<b>dollar</b> 23:25
<b>denied</b> 19:22 23:18	<b>despite</b> 18:21	110:3,4,5,9	<b>doable</b> 13:13	<b>dollars</b> 22:19,20
24:18 40:5,14,22	<b>destroy</b> 67:13	130:25 131:5	<b>docket</b> 34:2	23:13,18 27:6,9
45:21 48:15	<b>detail</b> 59:6 65:6	139:16 140:9,10	<b>docketing</b> 6:24	27:12 79:13 83:3
<b>deny</b> 19:24 20:12	78:25	140:15	<b>docs</b> 53:25 54:3	129:12 133:25
21:23 24:14 27:9	<b>detailed</b> 74:15 75:6	<b>differential</b> 83:17	56:18	139:23 140:2
37:16 40:11	78:12	<b>difficult</b> 38:17,20	<b>document</b> 34:4	141:21
49:17	<b>detailing</b> 11:25	<b>digits</b> 29:23	53:15,16,16,17	<b>double</b> 137:24
<b>department</b> 1:20	<b>details</b> 10:21 11:18	<b>dimmed</b> 4:8	53:19,21 54:4,5,6	138:3
6:14 96:17,25	12:7 14:25 18:5	<b>direct</b> 3:2 11:10	54:7,17,18,20,22	<b>doubt</b> 98:8 114:8
97:6,6,11,21	20:6,7,9 25:2,3,4	69:4 89:1,11 90:1	54:23,24 55:3,4,7	<b>download</b> 53:17
98:25 99:3,5	25:13 37:10,13	91:1 92:1 93:1	56:4,9,11,12,13	<b>Doyle</b> 101:16,19
100:4,5,14	46:5,5 49:7 50:7	94:1 95:1 96:1	56:13,17,22 57:7	102:7,8,9 106:6
106:12 129:6	50:8,8,9,11,17	97:1 98:1 99:1	57:13,16,18,18	113:5 135:9,11
<b>departments</b> 99:2	51:22 52:13,17	100:1 101:1	58:9,10,15,23	145:7
99:12	55:9,9 56:16	102:1 103:1	59:4 61:20 62:18	<b>draft</b> 45:6
<b>depend</b> 18:21	57:17 58:12 59:5	104:1 105:1	64:16,16 69:2	<b>dramatically</b> 91:25
<b>dependant</b> 77:17	65:19 85:13	106:1 107:1	72:20 84:4 87:13	<b>drawing</b> 68:23
<b>dependent</b> 77:18	<b>determination</b>	108:1 119:24	93:15 112:19,20	<b>drive</b> 54:6 57:19
<b>depending</b> 14:22	82:3 144:23	<b>directed</b> 5:8 42:16	112:22 113:8,14	<b>driven</b> 112:7,9
19:17 25:12	<b>determine</b> 20:11	66:16 67:9 69:6	114:23 115:2,5	123:6 125:6
64:17 66:16	27:22 37:15	122:20 137:6	118:3,3,16	<b>drives</b> 124:22
111:19	42:18 50:10 85:7	<b>directing</b> 123:8	123:12 148:16	125:11
<b>depends</b> 44:15	126:2	<b>directives</b> 103:11	<b>documentation</b> 7:4	<b>due</b> 10:23 11:25,25
62:15 72:8 80:22	<b>determined</b> 7:25	<b>directly</b> 17:21 51:7	8:20 12:8 48:3,9	12:2,11,19 14:9
83:7	80:16,17 81:2,5	<b>disappointing</b> 87:8	53:6,7,10,12,24	14:11 25:6 43:25
<b>depth</b> 78:4	82:2,13	<b>disclose</b> 90:9 152:8	54:14 62:14	44:4 45:5 48:23
<b>DEPUTY</b> 6:19,21	<b>determines</b> 46:16	<b>disclosed</b> 70:23	<b>documenting</b>	49:13,14 51:24
<b>derivative</b> 131:14	46:18 111:24	133:3	36:18	72:25 84:23
<b>describe</b> 46:14	138:14	<b>disclosure</b> 71:3	<b>documents</b> 9:25	<b>dummy</b> 55:15 75:4
96:7 99:10	<b>develop</b> 82:22	73:23	10:2,3,6,7 34:22	<b>duplication</b> 13:23
<b>DESCRIPTION</b>	121:7	<b>discovered</b> 34:23	53:8,14,18,22,25	<b>duties</b> 87:25
3:5	<b>developed</b> 82:5	<b>discovery</b> 149:6,22	54:3,8,9,11,12,16	142:21,22,22
<b>design</b> 71:18	<b>development</b> 6:14	<b>discuss</b> 11:22	56:23,24 60:10	<b>dutifully</b> 135:4
<b>designate</b> 60:8	130:10	90:16	73:19,20 84:4	<b>dynamic</b> 55:8
<b>designated</b> 8:17	<b>device</b> 38:5	<b>discussed</b> 68:17	86:19 87:22	56:15,19 57:16
30:20 43:23	<b>devices</b> 126:24	<b>discussion</b> 72:16	96:18 97:2 98:7	57:19 58:12
70:14 124:3	<b>DIANE</b> 1:9	76:21 151:20	102:3 112:23	
<b>designates</b> 27:25	<b>difference</b> 83:15	<b>disincentive</b> 31:10	145:15 146:17	

E

e 3:1 4:2,2 8:16	44:19	ESQ 1:12,15,19	152:19	fabulous 97:15
53:3 71:8 73:15	employed 95:17,21	2:1,4	excused 151:19	facility 33:25
153:1	employees 43:13	Essentially 15:20	exhibit 114:14,19	fact 67:13 76:12
earlier 58:25	44:12	16:20 149:20	115:22 116:7,13	81:3 127:11
early 142:18	empty 24:16 50:15	established 7:24	136:25 138:18	129:3
easier 25:21 100:3	enable 7:3	79:25	140:10	fail 35:23
100:12 151:18,19	encrypted 68:18	etcetera 24:2,2	exhibits 3:4 92:16	fair 110:15
easily 9:21 48:24	energetic 105:25	142:23,23,24	94:17 95:2	faith 146:17
52:25 57:6 65:17	ensure 7:18 34:25	ethic 98:24	existent 124:11	fall 10:23 12:12
Eastern 1:1 81:8	ensures 12:7	evaluate 50:20	exists 36:24	14:9 24:18,19
easy 54:15	enter 14:4,5,6 18:3	evaluative 50:22	expect 15:11 129:3	45:21,22 47:15
ECF 63:15	36:16 49:8,10	event 13:23 14:2,7	expectation 18:7	55:22 56:12,21
economic 86:8	51:22 52:20 55:9	14:9 49:9 50:14	expected 38:4	152:8
efficient 7:19 54:21	56:16 65:18	103:17	expensive 146:14	falls 14:7
57:8 99:17	entered 14:6 18:6,9	events 7:20 10:19	146:16	familiar 32:12
100:18	20:10 34:20 35:2	10:23 12:8 18:10	experience 80:17	127:17 128:13
efficiently 8:22	36:22 37:14	25:6 89:19	101:10 102:10	134:17,24 149:15
effort 13:23	43:10 51:11 52:3	everybody 106:13	expert 96:13	Fannie 112:10
Eileen 6:18	52:17,20,22	151:25	127:24	129:11 133:24
Eisenberg 1:15,16	58:13 131:2,6	Everything's 39:7	explain 28:2,3,7	137:25 138:14
17:4,6,12,15,17	143:8	EVID 3:5	47:23 118:16,24	139:6 142:23
39:15 40:2,4,8,11	entering 10:16	evidence 63:23	123:25 131:8	far 102:6 119:22
40:17,19 73:13	17:20 24:22 46:2	130:10,10	141:24	132:11
73:17 76:16	48:21 51:16	ex 38:23	explained 146:21	Fargo 110:6,12,16
88:15 131:4,23	enterprise 6:15	exact 12:12 20:9	explains 76:9	Fargos 91:2
132:7 133:5	entertain 23:12	37:13 96:6	explanation	Farm 31:16,19
142:10 150:21	entire 16:20	exactly 46:8 74:7	123:10	Fascinating 152:6
151:17,23 152:4	entities 77:17	85:16 135:2	explicit 8:5	fast 54:21 80:22
either 21:23 23:8	entitled 85:2,4	142:20	exported 75:8	faster 65:18 124:10
25:20 26:4,5	93:16 143:13	examination 89:11	extension 48:25	124:12,13
42:25 56:23	entity 91:11	134:9	extent 73:2	fastest 125:7,10
96:15	entries 52:22	examine 105:8	extra 84:5 92:22	fax 67:8,10
ejectments 90:21	128:14 134:17	109:3	extremely 66:10	feature 13:21 58:9
electric 133:22	entry 34:3,5 127:3	examp 55:16	147:23	83:18
electronic 3:24	envelope 66:5	example 9:23 12:9	Exxon 23:11,16	features 51:14
29:14 33:21 61:6	envelopes 96:14	13:14 14:8 16:10	27:5,7	77:14 78:6
63:14 74:2 96:20	equal 98:22	22:14 40:4 46:17	eyes 94:5 136:14	federal 67:21,25
126:24 153:5	era 91:20	55:5 74:21 80:3	e-mail 44:24 47:6	142:23
electronically	errors 65:18	99:16 101:19	65:5,19 67:22	fee 79:16,17,20,24
30:10,14,18 36:4	escalate 86:5	110:11 124:2,14	68:14,15 76:20	79:25 80:15,16
48:3,5	escalated 14:20	139:21 140:12	76:24 93:25	81:2,4 82:3,10,11
elects 29:2	escalation 44:16	examples 33:4	e-mails 45:4 67:14	84:2,5,23 91:24
elicit 140:14	85:25 86:2	Excel 29:5	68:13	109:12 110:3
eligible 51:11	103:17 105:17	excellent 78:22		137:16,19,19
email 67:7	106:5 127:16	exception 87:15		138:11,11,13
emergency 44:17	especially 60:8	excuse 115:15		139:18 142:8
			F	
			F 153:1	

143:3	123:7 125:4,6,11	128:7	first 15:6,22 20:5	foreclosure 8:9
feeding 13:9	125:12,22 126:7	file's 74:18	26:17 29:20	80:3,4,16,20,20
feel 4:20 49:8	126:21 127:18	filing 12:17 33:21	36:11 37:7 40:11	80:24 91:8 99:18
71:25 83:25	134:2 136:20,24	34:20 44:18	40:20 48:19	99:19 100:19
123:23	136:25 137:5,6	63:15,17	51:15 54:22 65:9	114:21 124:5
feels 99:25	137:11,11,15	final 58:11 74:14	74:19 93:17	127:22 128:20
fees 32:21 51:6,19	139:17 140:11,23	finalized 29:13	109:16 117:12	129:2,4,9,14
51:20 52:8,19,20	140:25 141:10,14	53:2	139:7	130:3 131:15,18
52:25 81:19 82:7	142:8 145:9	finally 135:3	fits 77:9	138:8 139:22,23
82:11 84:16,19	146:16 147:11	find 4:25 5:6 17:21	Fitzgibbon 101:5,6	141:21
87:15 109:21,23	Fidelity's 72:19,22	32:11 48:21	101:9,18,24	foreclosures 80:25
110:2,24 129:18	82:10 110:15	51:17 56:25 69:3	102:9 104:19,23	90:20
129:23 131:14	117:16 120:23	72:3 105:9,9	105:24 107:15,16	foregoing 153:4
136:18,19,20,23	121:6 125:3,12	118:7 121:17	108:4,7 135:12	forgetting 72:3
137:7,12,15,25	125:14,15,19	123:16 124:15	144:21 145:8	forgive 106:3
138:2,19 140:4,7	140:14	135:14,22 138:5	149:12 150:6	forgiven 106:3
140:12,13,15,15	field 14:5 49:11	138:17 140:14	Fitzgibbons 103:19	form 51:16 52:19
140:24 141:11,13	fifteen 100:16	145:25 146:4,9	127:2,19 146:23	53:2 55:8 56:15
141:17,24 142:22	fifty 84:3 91:3	147:6,10,10	149:3,17	56:19 57:16,19
felt 78:25	figure 21:10	fine 5:21 31:16	Fitzgibbon's	58:12 148:13
Fidelity 4:18 25:24	file 8:22 10:10,12	83:20 104:8	102:19 104:5	forth 22:7 64:25
26:13,16,17,19	10:13 11:5,6,7,8	115:17 123:18	five 10:2	71:9 110:2
26:25 27:6 32:5	11:18 12:5,7 13:2	finish 134:11	flag 14:17 25:8	112:12 137:6
43:17 44:2,12	15:6,12,17 16:11	finished 18:18	flags 19:3	146:18
45:4,10,13,15	17:3,22,23 18:11	146:3	flashes 44:9	forthcoming
66:12,18 68:22	20:6,19 24:8	firm 1:13 11:24	flat 79:16,17,18,20	103:18
68:24,25 69:23	30:11 35:24 48:6	12:2 27:23,23	79:24,25 80:15	fortunate 100:17
69:25 72:21,23	53:10,21,22,23	31:15 33:8 50:20	80:16 81:4	forward 4:21 5:2
77:18 82:9 84:8	62:23 63:4 65:6,7	51:23 52:2,5	137:25 138:11,11	18:21 19:17,17
87:23 88:2,7,14	68:14,16,19	54:16,18 60:17	138:13	21:19 22:9,22
91:7,16 92:5 94:2	71:23 72:2 74:16	60:19 65:16	flip 21:6	23:12,19 25:5
105:19 109:17,21	74:17,18,20,21	76:10 89:15	flipside 21:12	52:16 54:13 66:6
110:4,6,10,14,19	74:23 75:7 76:13	90:12 95:14	flood 148:4	found 91:14 126:9
110:19,24 111:18	85:5 96:18 105:7	103:3,10,20	flopping 21:7	foundation 129:22
111:24 112:5,7	108:16 112:2	104:3,4 115:20	Florida 89:25	four 42:12 45:3,4
112:12 113:6,6	117:21,22	116:10,12 117:2	flow 6:15 11:25	frame 7:21 120:11
113:16,16 114:2	filed 12:18 17:7,8	117:4,11,14,20	focus 64:3 99:24	120:17 125:6
114:3,12,21	34:21 62:12,20	119:12 121:14,18	100:12	frames 119:12,14
115:20 116:9,12	62:21 63:2	123:13,17 128:20	foggiest 105:5	119:14,21 120:8
117:3,4,14,20,24	129:17	130:4,5 132:3,3	follow 116:16	124:10,11,18,19
118:12 119:5,6,6	files 11:22 15:2	135:4,20 147:25	119:12 126:13	124:20,22,23,24
119:9,13,20,22	18:7 29:16 30:22	152:12	138:14	124:24 125:2,22
120:9,15,16,17	30:25 31:20	firms 8:13,14	follows 119:22	126:7,9,10
120:22,24,25	45:25 47:17 50:5	27:24 34:18 51:9	follow-up 72:23	framework 71:7
121:2,4,14,14,17	51:17 53:7,11,25	firm's 101:8	footprint 71:24	frankly 59:14
121:22 122:13	78:5 85:11 96:19	145:17	foreclosed 31:3	67:15 82:21



100:2 118:20  
121:10 123:10  
126:6 135:16  
144:6,7  
**Freddie** 112:10  
124:3,7 126:12  
139:3  
**FREDERIC** 1:19  
**free** 84:3 103:19  
122:16 150:4  
**friendly** 66:10  
**front** 112:25  
**fulfilled** 14:14  
**full** 84:3  
**function** 6:7,8 26:7  
26:9,13,16 71:17  
71:25 72:5 78:13  
79:6,7  
**functional** 72:4  
**functionality** 10:5  
71:18 73:4 78:10  
**functions** 10:20  
78:9,10 83:16,16  
142:17  
**fund** 24:2  
**funds** 36:18  
**further** 14:18  
16:23 87:21

## G

**G** 4:2  
**Gallagher** 2:7  
**gauge** 9:21  
**general** 6:7 11:7  
28:17,19 63:13  
68:13 78:8  
**generally** 33:7  
82:20 90:23  
**generate** 71:16  
85:9  
**generated** 81:6  
**generates** 19:10  
119:8  
**GEORGE** 1:19  
**getting** 13:8,9  
40:13,19 44:3,15

44:20 64:20  
68:13 106:7  
121:20 132:5  
**give** 5:3 33:4 39:24  
39:25 49:22 90:2  
100:8 106:23  
107:3,5 122:3,7  
125:4 132:20  
**given** 12:13 22:24  
46:2 49:25 82:24  
87:22 103:11  
120:25  
**gives** 13:7 45:10,10  
50:22 76:23  
78:12  
**giving** 12:19 74:7  
125:22  
**GMAC** 100:15  
**go** 4:21 5:2 6:7,20  
16:23 17:12  
18:21 19:6,17,17  
22:9,12,22 23:22  
24:11 29:6,11  
32:21 34:8 35:23  
36:5 39:4 42:10  
42:24 45:15 47:5  
47:22,25 48:4,6  
78:18 87:21  
91:19,22 92:18  
99:7 102:6,24  
104:21 124:21  
126:17 130:11  
131:9 143:25  
144:2 152:20,21  
**goal** 150:11  
**goes** 24:4 27:17  
36:2 37:25 43:9  
57:3 68:18 80:23  
125:6 130:14  
**going** 6:18,20  
14:12 15:19 22:9  
23:12 26:5 31:17  
33:12,15 37:24  
39:4,5,24,25 41:8  
41:9,10 59:7,18  
66:22 67:8 72:25

89:16 97:3,16  
102:25 109:25  
112:23 116:2  
122:9,17 124:9  
125:5 128:8  
130:25 131:4  
132:3 133:12,15  
133:20 139:21,23  
139:25 141:20  
143:23,25 144:2  
145:25 147:5  
151:3 152:8  
**Goldman** 1:13  
89:15  
**good** 4:3,4 6:3  
31:21 33:24 35:7  
42:15 47:4 51:24  
68:8 78:16,18  
86:14,14 87:18  
89:13 96:11  
146:17  
**goodness** 86:10  
90:4  
**gotten** 5:16 76:18  
81:13 122:23  
**govern** 110:10  
**government**  
142:23  
**government's**  
67:25  
**governors** 70:4  
**grading** 35:6  
**graduated** 90:4  
**grave** 129:2  
**Graves** 102:16  
**great** 6:11 60:2  
**green** 39:5 47:20  
**grew** 91:20  
**grounds** 130:7  
**guess** 26:12 33:25  
39:8 69:17,23  
86:5 97:11 98:4  
98:13 120:20,20  
121:5 129:16  
131:24 139:21  
146:12

**guide** 78:8,9  
**guidelines** 138:15  
**guides** 78:6,10  
**guys** 19:5 32:4  
125:8,9,9  
**Gwynne** 2:4 21:2,8  
24:3,10 25:16  
26:2 59:14 62:10  
62:13,19,22  
63:15,17,20,23  
64:2 67:17,22  
68:6 73:18,21

## H

**half** 107:23 122:12  
**hand** 56:14 67:11  
88:20,21 139:25  
**handle** 102:5  
134:24  
**handled** 60:2 98:3  
128:8 135:8,9  
152:12  
**handling** 63:12  
139:21  
**hands** 32:24  
149:22 150:8  
**hanging** 145:20  
**happen** 44:9 58:21  
**happened** 34:20  
35:16 38:3 75:14  
87:12 102:24  
103:4 104:10  
119:17 134:15,16  
134:25 145:24,25  
146:4,4,23 149:9  
152:14  
**happens** 30:9 38:6  
38:21,22 50:24  
59:8 62:17  
119:17 125:3  
142:18  
**happy** 147:2,19  
149:8  
**hard** 21:9 31:24  
54:6 57:19 118:9  
133:16

**head** 17:5 135:4  
145:21 147:2  
**hear** 25:17 103:5  
104:5,10 147:8  
**heard** 22:4 27:20  
59:24 91:11  
101:5 103:13  
104:7,16 105:18  
122:12 125:18  
137:7 145:13,17  
**hearing** 1:9 4:9  
27:17 44:18  
69:17 76:6  
108:16 147:16,20  
148:24 149:11  
**hearings** 102:13  
151:13  
**heart** 10:9 88:2,6  
**heaven** 124:6  
**held** 50:15 63:9  
**help** 77:25 78:5,6,7  
107:9 124:2,9  
**helpful** 77:22 79:4  
92:9 99:22  
134:19 147:11  
**hey** 106:6  
**he'll** 47:25 118:8  
**hidden** 51:9  
**hide** 123:5  
**hierarchy** 59:20  
**high** 97:25  
**higher** 65:5 123:24  
**Hill** 89:8  
**hire** 99:2,2 101:17  
**hired** 98:5 101:17  
101:18  
**histories** 107:17,23  
**history** 10:12  
37:21 38:8 39:14  
40:5,8,9 45:8  
46:11,11,18,21  
48:2,5 66:8 74:14  
74:18 75:7  
102:24 106:19  
108:17,20 109:18  
147:22 149:10

<b>hold</b> 6:17 12:14 14:24,25 15:2,3,4 15:5,7,10,11,12 15:14,19,22,24 15:25 16:14,25 17:9,12,24,24 18:2,7,10,12,13 18:14,18,19,20 18:21 19:2,4,8,22 19:24,25 20:5,8 20:12,20 21:12 21:15,23 22:14 22:23 23:4,8,14 23:17,23 24:20 24:21,23,24 25:4 25:5,6 26:14,14 27:9 37:19 43:8 114:24,24	150:12 151:5,17 <b>HONORABLE</b> 1:9 <b>hoot</b> 125:4 <b>hope</b> 114:5 147:3 <b>hopefully</b> 87:8 117:17 <b>hour</b> 107:23 122:12,12 <b>hours</b> 33:7,8 42:12 42:13 <b>Houston</b> 2:3 <b>how's</b> 97:6 <b>HSB</b> 151:15 <b>HSBC</b> 1:16 29:15 29:18 59:25 87:23 91:3 103:15 109:11,12 109:17,18,20,22 109:24 110:12,17 111:25 113:20,21 129:11 138:21,24 139:3 140:6,11 141:19,20 142:19 146:18 152:12,13	<b>illustration</b> 9:5 <b>imagine</b> 76:3 <b>implementation</b> 29:4 <b>implicate</b> 73:23 <b>implications</b> 79:13 <b>implied</b> 151:7 <b>important</b> 8:19 93:12 140:23 143:22 <b>imposed</b> 123:5 <b>impossible</b> 65:15 <b>improperly</b> 104:16 <b>inappropriate</b> 134:3 <b>inbox</b> 8:25 9:18,22 9:23 11:21 44:25 65:25 66:3,8 <b>include</b> 8:13 65:19 <b>included</b> 9:25 20:8 37:12 <b>includes</b> 11:7 64:22 78:4 <b>including</b> 8:19 11:15 54:7 <b>independent</b> 18:24 108:14 <b>indicate</b> 131:25 <b>indicated</b> 120:22 126:8 <b>indicating</b> 126:4 127:7 <b>indiscernible</b> 8:7 8:21 11:2 18:5 49:9 56:2 57:17 58:11 65:6,8,17 65:21 78:8,11 <b>individual</b> 20:16 <b>industry</b> 133:24 <b>inferred</b> 104:17 <b>informal</b> 122:16 <b>information</b> 7:5,7 10:8,10,11,14,15 10:18 11:3,7,11 11:15,22 12:4 13:8 14:2 17:22	18:8 20:8,11 21:4 24:25 25:2 36:12 36:18,21 37:12 37:15 38:25 43:20 46:4 47:16 48:8 50:17,22 51:2,17,23 52:3 53:8,11 56:19 64:24 65:10 66:11,19,19 70:23 74:19 75:19 78:13 82:25 92:2,3,6 103:17 104:13 141:6,10 <b>informed</b> 4:16 <b>initial</b> 29:3 <b>initially</b> 84:7 <b>initiate</b> 23:8 <b>initiated</b> 7:9 8:11 8:15 23:3 51:19 <b>Innovative</b> 7:2 <b>inputted</b> 33:24 <b>inquire</b> 98:25 <b>inquiry</b> 99:24 103:5 122:25 131:3 <b>inside</b> 17:24 50:24 51:19 <b>instance</b> 11:11 42:14 <b>instances</b> 80:8 <b>instant</b> 68:13 <b>instruct</b> 87:3 <b>instructive</b> 86:15 <b>insurance</b> 31:14,14 31:16 129:6 148:5 <b>intelligence</b> 98:24 <b>intelligent</b> 99:17 <b>intention</b> 145:15 <b>intentionally</b> 148:23 <b>interact</b> 91:13 92:2 <b>interaction</b> 77:15 <b>interchange</b> 72:12	<b>intercom</b> 36:8 53:4 64:22 65:10,12 65:21,25 66:13 66:24 68:24 69:4 72:7,18 75:23 76:2,19,22 77:12 77:14 83:21,24 <b>intercomming</b> 68:12 <b>intercoms</b> 68:17 81:24 <b>interfere</b> 72:15 114:12 <b>Internal</b> 7:19 <b>internet</b> 71:4 73:15 84:12 <b>interrogatory</b> 45:5 <b>intervals</b> 30:10 <b>interview</b> 98:23 <b>interviewed</b> 124:2 <b>investigated</b> 145:10 <b>investigation</b> 130:9 <b>investigations</b> 67:25 <b>invoice</b> 81:6,6 <b>invoices</b> 142:17,17 143:8,10,16 <b>involve</b> 152:9 <b>involved</b> 72:22 103:9 <b>involves</b> 7:12 <b>involving</b> 14:19 <b>in-depth</b> 78:15 <b>in-house</b> 62:25 <b>in/out</b> 13:24 <b>iPhone</b> 126:23 <b>irregular</b> 142:2 <b>irrelevant</b> 131:3 142:15 <b>issue</b> 25:13,14 36:9 36:10,11,13,17 36:17,20,23,24 36:25 37:3,7,11 37:12,16,18,20 37:20 38:7,14	
<b>holds</b> 14:17,21 18:20 20:6 23:6 24:17,20,21,22 24:25 25:9	<b>hold's</b> 18:2 20:4 23:18	<b>hold's</b> 18:2 20:4 23:18			
<b>home</b> 67:22	<b>hundred</b> 22:18 27:6,10 95:19	<b>hundred</b> 22:18 27:6,10 95:19			
<b>Honor</b> 4:4,14 5:25 9:11 12:25 16:10 18:16 21:2 22:13 24:4 25:16 35:5 44:22 59:14 67:7 73:18 78:24 82:21 86:17 87:10 92:22 93:21 94:4 102:23 106:22 108:3,24 109:2 111:7,17 116:5 116:18,25 118:2 118:23 123:25 130:12 131:4,23 132:18 133:5,19 134:5,7 136:3 140:25 141:7,25 142:7,13 143:22 144:19 147:14 149:5,13,24	<b>hurt</b> 147:4 <b>hypothetical</b> 33:5 46:17 99:23 110:9	<b>hurt</b> 147:4 <b>hypothetical</b> 33:5 46:17 99:23 110:9			
	<b>I</b>	<b>I</b>			
	<b>IBM</b> 91:19 <b>icon</b> 20:7 25:2,3 36:23 37:10 39:2 39:2,5 46:6 52:13 <b>id</b> 3:5 10:3 53:14 <b>idea</b> 68:16 <b>identical</b> 87:14 116:24 <b>identified</b> 88:16 97:4 <b>identify</b> 7:17 95:10 98:2 <b>Ikon</b> 73:19	<b>IBM</b> 91:19 <b>icon</b> 20:7 25:2,3 36:23 37:10 39:2 39:2,5 46:6 52:13 <b>id</b> 3:5 10:3 53:14 <b>idea</b> 68:16 <b>identical</b> 87:14 116:24 <b>identified</b> 88:16 97:4 <b>identify</b> 7:17 95:10 98:2 <b>Ikon</b> 73:19	<b>IBM</b> 91:19 <b>icon</b> 20:7 25:2,3 36:23 37:10 39:2 39:2,5 46:6 52:13 <b>id</b> 3:5 10:3 53:14 <b>idea</b> 68:16 <b>identical</b> 87:14 116:24 <b>identified</b> 88:16 97:4 <b>identify</b> 7:17 95:10 98:2 <b>Ikon</b> 73:19		

39:3,3,6,17,18  
40:20 42:3 43:17  
44:19 45:22,24  
46:2,3,5,6,7,21  
47:11,13,14,15  
47:20,21,22  
72:20,25 74:10  
76:4 89:19 127:3  
132:19 145:15  
150:25  
**issues** 25:8,10,14  
36:14,15,15 37:4  
37:6,8,9,10 42:12  
42:13,23,24  
44:23 45:3,11,20  
45:22,23,25  
47:16 74:4 83:18  
152:11  
**issue's** 46:8  
**item** 78:15  
**items** 8:19,25 9:19  
9:21 11:10,25  
**iteration** 9:11  
**it'll** 18:21 100:12

---

**J**

---

**J** 1:4,12,19  
**Jenkintown** 1:18  
**Jersey** 89:9,25  
99:19  
**job** 42:23 43:11  
70:14 71:17,25  
96:17 104:23  
**jobs** 44:2  
**Joe** 59:4  
**Jonathan** 1:12  
89:14  
**judge** 1:10 39:15  
40:2 43:21  
140:13  
**judgment** 18:24  
61:10 130:3,12  
131:2,19  
**judgmental** 58:21  
**judgments** 97:18  
**judicial** 80:20

149:6  
**jump** 5:20 32:4  
**June** 102:13  
108:16 147:20  
149:11 151:15  
152:17  
**jurisdiction** 63:13  
63:14 64:17,17  
80:19,23  
**jurisdictional**  
63:11  
**jurisdictions** 80:23  
**JUSTICE** 1:20  
**jut** 135:17

---

**K**

---

**K** 1:15  
**keep** 50:19 63:18  
72:22  
**keeps** 20:14 24:4  
**key** 7:19 12:4  
38:25  
**keys** 50:4  
**kicking** 91:22  
**kind** 6:6,7 22:10  
34:5 45:6 69:24  
99:23 103:11  
104:20  
**kinds** 91:24  
**knew** 23:8  
**knocked** 124:17  
**know** 5:23 12:21  
13:8 14:14 16:5  
18:19 22:7,17,18  
22:20 25:25  
27:22 31:4,15,18  
31:24 33:21 34:4  
34:12,13 35:22  
39:13,22,25  
40:15 42:11,15  
44:20 53:4 59:7,8  
59:13,16,17  
63:12,22 64:4  
66:21 67:25 68:6  
68:10 70:5,13,13  
71:5,10,12 72:11

74:3,7,9 76:4,7  
77:11,22,25  
79:14 82:8,12,15  
82:17,20 83:6,9  
85:14 91:3,19,23  
94:14 96:13 97:3  
97:9,25 98:6,21  
98:23 99:12,24  
101:12 102:4,23  
103:7,8,9,10,10  
103:15,22 104:2  
104:9,9,15,25  
105:13,18 107:2  
107:7,15,21  
108:6,8,9 109:24  
109:24 111:7  
112:15,21 113:9  
113:11,12,18,23  
113:24 118:7,7  
118:13,14,17,20  
118:25 119:22  
120:4,20,21  
121:9,11 122:2,4  
122:19,20,24  
123:24 124:2,6,7  
126:3,6,7,22  
127:21,22 128:18  
128:19,23,24  
129:10,12,20  
131:8,9,10,20,22  
132:11,20 133:17  
134:3,14,15,16  
135:3,7,10,11,19  
137:18 138:2,3,4  
141:13,14 142:2  
142:4,11,14  
143:21 144:20,21  
145:6,9,14 146:5  
146:5,6,24 148:6  
148:7,9,15,17,22  
148:25 149:3,9  
149:12,17,21  
150:3,6,10,10  
151:18 152:7,14  
**knowledge** 121:21  
127:10

**knowledgeable**  
100:18  
**knows** 6:4 28:10  
35:25 58:14,15  
58:23 67:24  
68:20 107:12  
135:7  
**KURT** 2:4

---

**L**

---

**L** 29:21  
**lab** 49:21  
**label** 18:13  
**larger** 10:19  
**latest** 5:7 136:11  
**latitude** 76:25  
**launch** 54:25 55:2  
**launches** 55:6  
**law** 1:13 27:24  
31:15 50:20  
60:17,19 89:15  
89:20,24 90:2,5  
90:10,11,18  
91:21 95:13,21  
96:8 123:13,17  
**lawyer** 9:5,15  
27:25 100:25  
146:19,20 147:2  
147:5 148:15  
**lawyers** 33:22 35:6  
148:9  
**layer** 44:23  
**LBS** 25:11,11  
**lead** 130:10  
**learn** 34:16  
**learned** 27:17,25  
100:22  
**lease** 65:5  
**leave** 89:17 95:15  
103:4 152:5  
**leaving** 6:19  
**led** 39:23  
**left** 17:5 49:21  
52:10 57:25  
88:21 101:11,14  
**legal** 74:7 114:3

117:15 124:23  
**legible** 94:3  
**lender** 2:1 6:2  
20:22 26:15,22  
26:23 27:2,13,15  
27:18,21,21 28:8  
30:10,20 31:9  
63:7,23 81:13  
82:9,11 90:21  
110:4 123:4  
143:12 144:7  
**lenders** 26:20,20  
26:22 27:4 32:6  
86:14 90:19 91:3  
**lender's** 16:12,14  
**lending** 90:22  
100:16  
**letter** 29:19,20  
67:9  
**letters** 67:16  
117:23  
**letting** 53:4 83:6  
**let's** 5:22 8:23  
10:15 11:22 15:3  
16:10 19:23 36:8  
37:2 45:24 48:17  
48:22 49:16 52:6  
54:21 55:24  
56:13,16 57:9,22  
59:3 61:10 63:7  
64:19 65:8,22  
74:21 88:17  
99:22 114:25  
118:6 152:20,20  
**level** 17:15 99:13  
**levels** 70:21 91:24  
**license** 31:6 32:20  
**licenses** 84:7  
**licensing** 32:19  
**lifecycle** 15:3 36:8  
**light** 19:16 37:20  
135:6  
**lights** 4:8  
**liked** 91:15  
**limit** 74:24  
**limitations** 7:19

<b>limited</b> 70:14 74:6	14:2,24 17:20	128:15	123:23	100:1 101:1
149:7	24:25 25:13	<b>looking</b> 15:4 20:20	<b>maintains</b> 62:8	102:1 103:1
<b>line</b> 8:24,25 10:3	29:22,23 30:13	36:9 39:12 66:12	<b>making</b> 21:14	104:1 105:1
10:20 59:6 95:23	36:11,24 46:3,4	74:4,6 79:9 93:19	26:23 97:18	106:1 107:1
148:14	46:18,21 48:19	113:22,23 114:10	<b>manage</b> 7:3 66:25	108:1 109:1
<b>lines</b> 43:20	48:21 50:17	116:23,24	71:15 94:4	110:1 111:1
<b>link</b> 9:18,24 18:2,2	51:15,16 54:23	<b>looks</b> 28:11 136:10	<b>managed</b> 7:16	112:1 113:1
36:15,15 46:7,10	57:10 58:8 65:2,9	<b>loose</b> 102:4	11:22 103:10	114:1 115:1,7,9,9
48:4 49:3,25	65:14,16 66:8	<b>Lorraine</b> 106:6	<b>management</b> 6:15	116:1 117:1
51:21 53:11,12	74:15,19 106:19	113:5	7:12 8:4,7,16,23	118:1 119:1
53:14 54:2,3	107:17,22 108:16	<b>loss</b> 14:19 51:10	9:2 10:8 12:3	120:1 121:1
57:12 65:12	108:20	145:24	20:2,3 37:5,6	122:1 123:1
74:23 78:7	<b>loans</b> 7:15 24:24	<b>lost</b> 119:4 121:11	49:20 51:8 52:9	124:1 125:1
<b>links</b> 11:10 78:14	30:11 65:5	<b>lot</b> 9:21 63:3 80:24	56:3 57:5,25	126:1 127:1
<b>Lisa</b> 153:3,11	<b>local</b> 7:15 57:19	82:25 91:21	64:23 100:20	128:1 129:1
<b>list</b> 11:12 12:12	63:11	128:25	<b>management's</b>	130:1 131:1
14:25 24:22	<b>locate</b> 95:9	<b>LPS</b> 6:12,14,14,25	54:17	132:1 133:1
25:14 28:21 29:5	<b>located</b> 8:25 11:5	7:9,13,13,16,22	<b>manager</b> 99:3,4,16	<b>marked</b> 18:10
29:6 31:19 32:5,8	17:25 20:2 36:13	7:23 9:17 13:20	99:18,19,19,20	92:16 114:23
32:15 45:25 47:2	37:4 52:9 54:2	14:16,21,22	99:20,21 100:4,5	115:5,8 150:21
47:8 49:25 53:12	<b>lock</b> 50:13	17:19 18:12	100:14 127:21,23	<b>market</b> 2:5 121:11
54:3 127:16	<b>log</b> 6:21 42:24	19:21 24:12 29:2	127:23 128:10,12	121:12
136:23	<b>logged</b> 49:18	29:3,7 36:6 45:19	<b>managers</b> 99:11,13	<b>marketing</b> 121:7
<b>listed</b> 45:24 52:23	<b>logging</b> 8:24 19:25	47:10 48:7,13	127:20 135:14	121:14,17 124:21
65:15 129:7	37:3 49:18 51:13	51:5 55:20 57:4	<b>manages</b> 12:15	125:2
<b>listen</b> 16:12 23:11	52:7 55:25 57:23	61:4 64:21 74:13	100:23	<b>Mark's</b> 34:7
92:14	65:23	75:5 78:3,4,21	<b>managing</b> 7:6 71:8	<b>match</b> 35:2
<b>lists</b> 140:23	<b>login</b> 42:9	109:14	113:4	<b>matches</b> 35:16
<b>litigation</b> 63:2	<b>long</b> 78:25 81:22		<b>manner</b> 48:18 60:3	<b>materially</b> 5:18
128:6,7	87:5 124:5	<b>M</b>	117:15	<b>matrix</b> 29:4 44:21
<b>little</b> 13:18 34:10	<b>longer</b> 14:9 36:20	<b>M</b> 1:19 29:21	<b>manual</b> 97:22	70:3 85:25 86:2
35:22 39:2,2	<b>look</b> 10:7,15,24	<b>Mac</b> 112:10 124:3	106:8,10,15	<b>matrixes</b> 44:13
47:18 60:9,12	15:3 28:11 34:4	124:7 139:3	<b>manuals</b> 97:20	<b>matter</b> 4:9 63:12
76:23 96:14	36:8 43:19 52:6	<b>machine</b> 67:10	106:11,11	76:13 81:22
100:12 139:16	54:22 57:9,22	<b>Macs</b> 126:13	<b>March</b> 115:25	83:23 89:16 96:8
<b>live</b> 11:24 24:17,21	61:20 65:8,22	<b>Mae</b> 112:10 129:11	<b>marching</b> 22:24	96:21 100:6,20
45:20	66:21 67:2 68:19	133:25 138:2,14	<b>Marine</b> 109:20	126:10 128:7
<b>lives</b> 101:13	76:4,12 86:19	139:6 142:23	<b>mark</b> 3:3 5:25 6:3	129:3,7 139:19
<b>living</b> 118:17,24	102:21 109:18,24	<b>mail</b> 8:17 31:2 53:4	32:25 35:18,19	140:17 145:8
<b>LLP</b> 1:16 2:5	112:16,21 114:14	62:4,5,17 63:5	38:6,21 41:20	153:6
<b>lo</b> 97:12	117:7 124:8	73:16 96:14	55:12,14 68:15	<b>matters</b> 22:5
<b>load</b> 14:9 25:7	125:8 126:4	<b>mailed</b> 63:8	88:22,25 89:1	<b>maximum</b> 143:3
55:22 56:22	138:18 139:3	<b>mailing</b> 46:17 71:9	90:1 91:1 92:1,15	143:23
<b>loaded</b> 8:7	140:20 141:20	<b>mails</b> 46:18	92:15 93:1 94:1	<b>maximums</b> 144:4
<b>loan</b> 7:9,16 9:24	145:4,13	<b>main</b> 10:18 127:23	94:20 95:1 96:1	<b>ma'am</b> 14:15
10:7,16,16 11:8,9	<b>looked</b> 47:21	<b>maintained</b> 123:22	97:1 98:1 99:1	<b>McDonald-Hamer</b>

147:15	<b>mechanism</b> 33:18	106:22 107:4,7	<b>M-14</b> 114:23 115:2	51:24 52:2 55:3,4
<b>McKuhn</b> 150:13	<b>meet</b> 45:24 50:11	<b>mitigation</b> 14:19	<b>M-15</b> 115:10	55:15 56:14
<b>mean</b> 5:9 15:7,10	<b>meeting</b> 13:14	51:10		102:3 132:24
15:11 16:5,25	48:22,23 49:6,11	<b>mix</b> 96:6 149:25	<b>N</b>	<b>needs</b> 15:6 17:7,8
21:3 23:21 27:14	50:14	<b>mock</b> 50:6	<b>N</b> 3:1 4:2 153:1	36:11 39:3 47:5
33:19 34:14 35:6	<b>meetings</b> 117:20	<b>module</b> 10:7,25	<b>name</b> 11:8,9,12,13	51:20 54:5 55:23
37:23 38:7,12	<b>men</b> 36:13	13:12 54:18,18	11:14,14 15:10	56:11 57:15 75:9
39:10,12 40:23	<b>menu</b> 11:19 17:25	54:19 57:6 60:25	29:20 33:9 52:15	97:19 133:16
43:3 44:12,15,18	18:2 36:14 49:2,2	78:2	52:16 60:4 65:17	145:10
55:16 58:21	51:18,20 53:10	<b>modules</b> 6:6 11:20	88:24 100:8,10	<b>neither</b> 136:13
59:24,25 60:3	53:25 54:2,25,25	38:18 51:6	129:7	<b>nervous</b> 79:9
61:6 62:22,25	57:11 65:11,11	<b>moments</b> 38:25	<b>names</b> 11:9 90:25	<b>net</b> 71:8
63:25 67:14,20	74:22	39:4	<b>National</b> 91:8	<b>network</b> 3:6 54:7
68:2,22 69:9 70:7	<b>message</b> 36:8	<b>money</b> 7:8	114:21	57:19 93:16
70:10 71:6,13,20	44:25 53:4 65:4	<b>monitor</b> 142:17	<b>natural</b> 147:6	114:22 121:8
71:24 73:25 74:2	65:15,19,20,23	143:8,10	<b>nature</b> 103:8	127:24 135:21
76:17,20 79:8	66:5,6,7	<b>monitored</b> 52:4	<b>navigate</b> 17:23	143:24
82:2,6 83:10,23	<b>messages</b> 64:22,24	<b>monitoring</b> 7:20	36:11 49:2 56:3	<b>never</b> 23:20 27:2
91:12,13,20,24	64:25 66:2,3,4,9	56:6	<b>navigates</b> 17:21	58:14,15 59:13
95:15 96:6 97:24	66:10,13 72:7	<b>monitors</b> 97:11	58:8	65:4 85:19 88:3
98:2,15,22 103:7	<b>messaging</b> 68:13	<b>month</b> 85:18	<b>navigating</b> 78:5	104:16 134:3
103:14 104:18	<b>met</b> 50:12 104:11	<b>monthly</b> 32:21	<b>navigation</b> 9:2	148:3 151:7
105:6 106:2,24	<b>Metrosys</b> 78:5	<b>months</b> 105:25	11:5 12:3 20:2	<b>new</b> 8:3 9:23 12:10
107:4 108:10	<b>MICHAEL</b> 2:1	<b>morning</b> 5:10	37:5	20:6,9 25:3 36:23
112:10,16 114:5	<b>Microsoft</b> 54:8	<b>mortgage</b> 1:16 7:9	<b>necessarily</b> 13:5	37:7,8,9,12 49:4
114:10 118:6,17	67:2,14 73:8	19:15 22:5 90:22	58:20 138:24	50:13 51:21
120:21,25 121:9	<b>Midlin</b> 109:20	<b>Moses</b> 150:3	<b>necessary</b> 19:23	52:14 53:13 54:3
121:9,11 122:21	<b>Mike</b> 22:18 31:15	<b>Moss</b> 1:16 132:3,10	37:2	55:6 57:12,14
123:10 126:4,7	47:5 67:18	<b>motion</b> 15:18	<b>need</b> 10:24 14:4	65:12,25 66:3,5
127:20 128:6	<b>Mike's</b> 31:17 68:16	16:11,15 17:7,9	15:5 17:23 18:4,6	73:25 74:23,23
129:20 130:3	<b>milling</b> 71:25	22:9 61:13 81:10	18:21 25:9 28:20	89:9,25 97:12
131:24 132:3,11	<b>millions</b> 90:8	81:13 97:3	28:21 36:10,17	99:19 101:6,9
135:11,14,15,19	<b>mind</b> 142:5	101:20 103:2	36:20 40:8,8 45:2	115:22 116:24
136:24 141:18	<b>mine</b> 116:17	112:3 117:21,22	45:2 47:7,23	124:10 126:24
144:22 145:2,10	117:17 126:11	138:7,8	48:19 49:2,4,7,12	<b>newer</b> 114:16
146:13 147:21	<b>minimize</b> 7:20	<b>motivates</b> 125:11	49:15 51:18,22	<b>NEWMAN</b> 28:2,4
148:7,8,25 149:2	<b>minute</b> 134:5	<b>move</b> 21:19 23:19	55:19 56:19	28:7,14,18,21,24
150:23 151:9,10	<b>minutes</b> 74:11	25:5 52:16 54:13	57:24 59:2 63:4	30:4,7,9,23 31:5
152:13	<b>mischaracterizes</b>	64:19 134:13	65:9 77:3,25 88:6	31:12,24 32:2,8
<b>meaning</b> 84:6	111:11	148:17	88:17 93:9 96:18	32:13,20,24 34:7
147:5	<b>misleading</b> 111:11	<b>moving</b> 72:22	97:16,21 98:7	34:10,13,15,17
<b>means</b> 39:2 40:24	<b>missed</b> 12:7 74:7	<b>Mulchay</b> 151:18	99:5 106:7	34:24 35:9,13,15
41:17 65:3 68:11	<b>missing</b> 54:23	151:21 152:5,6	108:19 118:14	36:4 38:6,12,17
68:22	<b>misspoke</b> 106:4	152:20	122:21 124:17	38:20,23 39:10
<b>measure</b> 35:15	<b>mistake</b> 129:6	<b>multiple</b> 8:14 17:2	134:9,17,25	39:14 40:24 42:5
<b>mechanical</b> 73:23	<b>misunderstood</b>	54:8 85:11	<b>needed</b> 5:14 14:3	42:15,22 43:6,8

43:11,18 44:11 46:13,22 47:18 55:12,14,18 60:6 60:8,14,17,19,22 60:25 61:7,9,13 61:16,19,22,25 62:3,7,9,12,14,21 62:24 63:10,25 64:4,6,9,12,15,20 66:14,16,21,25 68:8,12,24 69:5,7 69:9,13,16,21 70:5,7,12,17,19 70:21,25 71:20 71:23 72:8,14 73:3 75:4,13,21 76:2,8,19,24 77:2 77:5,7,9,13,19,21 77:24 78:17,20 79:16,18,20,23 80:3,8,11,13,15 80:19,22 81:4,11 81:15,17,19,25 82:5,10,14,20,23 83:9,13,19,22,25 84:9,15,17,20,25 85:4,9,12,16,19 85:23 86:2,7,10 86:12 newspapers 91:2 NewTrak 4:11 12:21 27:19 91:14 96:9,13,15 96:17 97:12 100:22 103:16 105:14 108:21 125:13 126:16,23 127:14,17 133:3 133:21 134:18 149:15,15 151:14 152:12,18 nice 79:14 104:23 120:24 nickel 134:2 NILES 1:4 nine 95:15 97:4	nobody's 15:11 nomenclature 37:22 non 120:2 nonjudicial 80:19 80:25 nonlawyers 35:7 non-Fidelity 120:2 120:11 Northwest 50:4,5 notarized 61:22 note 23:16 50:3 66:8 67:11 75:2,2 75:3,4 134:22 notes 65:6 74:14,18 74:20,22,23,24 74:25 75:7,12,13 75:14 83:21 108:11,12 152:18 notice 8:17 15:24 52:22 65:14,25 notices 62:22 notification 8:15 8:18 notified 36:7 notifies 36:24 notify 47:14 notifying 56:22 notion 27:18 105:5 nuances 64:12 number 6:5 7:22 9:24 10:16 11:8,9 11:16 13:2 15:21 17:21 20:14 24:25 29:23 46:4 51:16 53:14 69:18 122:18 125:15 132:17,18 132:21 numbers 29:23 132:6,9 numerous 7:11 8:9 54:7 <hr/> O O 4:2 153:1	oath 122:15,22,22 object 111:9 117:21 122:9 131:4 objected 132:15 objecting 130:6 objection 118:2 141:7 objective 30:2 35:15 obligations 121:6 observation 146:25 observing 151:18 obtain 69:2 121:7 obtained 108:20 obvious 76:12 105:22 obviously 20:16,22 35:5 59:25 occasions 101:25 occurred 126:20 occurs 96:7 October 1:7 153:10 offer 22:19 23:13 23:17,25 27:8,8 27:11 29:9 130:7 130:8 offered 8:3 offers 23:12 office 1:20 8:2,2,6 9:3 18:13 25:19 43:4,7 49:16,23 54:8 55:25 57:22 67:15 89:6 94:18 95:18,22 96:8,22 100:17 101:16 103:10 105:21,23 113:3,4 124:20 127:17,21,23,25 128:10 132:9 offices 42:17 90:11 90:18 95:13 official 153:5 oh 19:14 31:3 86:10,19 87:12	87:16 90:4 92:23 93:2 113:21 121:19 126:18 132:5 134:12 okay 4:6,8 6:9,10 6:19,20,21,24 9:14 13:19 15:22 16:16 17:11,14 17:18 18:19 19:19 20:17,25 22:16 23:19,24 24:11 27:21 28:10 31:7 36:3 38:16 39:24 40:22 41:4,16,23 42:2,3,8 45:4,17 45:18 47:4,9 48:6 55:17 60:24 61:3 62:2 64:19 66:18 68:6 74:5 80:14 82:12 83:12 86:11,13,14,15 86:24 87:19 88:17,18 89:10 90:2,23 91:5,10 92:19,23 93:2,4,4 93:4,9 94:5,10,12 95:6,25 97:15 98:12,16 99:7 100:7,14 101:4 102:15,22 103:23 105:10 109:16 111:16 113:15 115:15,16,25 116:17 117:5 118:25 121:19 133:10 134:12 136:10 138:12 139:5 144:9,11 148:11 old 1:17 92:23 115:21 116:22,23 older 115:2 omission 107:12 once 7:24 8:15 9:22 11:6 13:25 17:22	17:24 18:2,8,9,12 24:16 25:14 29:13,14 33:8 36:15,21,22 37:17 38:10 39:3 41:11,19 46:6,8,9 46:11 47:11 48:14 49:6,12,18 49:24 50:8 51:17 51:19 52:3,10 53:2,12,19,20 54:9 58:7,10 65:20 74:23 81:5 84:2,11 96:22 121:10 ones 29:7,8 114:16 114:16 120:14 126:13 150:18 one-third 29:21,21 29:21 online 7:4 open 9:23 18:10 42:3 43:17 45:3 46:20 53:16,19 59:7 65:12 66:4 72:21,24 76:3 77:12 83:18 96:18,18 opened 38:7 61:10 127:3 opening 37:20 77:6 opens 20:8 37:12 49:4 51:21 52:14 54:3 57:12,13,16 66:5 operated 123:13 123:17,19 operations 99:15 99:18 127:21 128:12 135:14 Operator 2:7 opine 119:6 opinion 92:5 124:21 opinions 103:3,6 opportunities
---	--	--	---	--

14:20 98:22 <b>opportunity</b> 29:9 102:12,18,19 <b>opposed</b> 26:15 <b>option</b> 8:3,4 54:25 <b>options</b> 30:23 <b>order</b> 88:5 150:15 151:25 <b>ordered</b> 149:10,25 <b>orders</b> 22:24 <b>organization</b> 71:12 <b>organized</b> 100:18 <b>original</b> 48:23 55:4 62:8,17,23 63:5,8 63:18 <b>originally</b> 47:13 <b>outcome</b> 7:19 <b>outline</b> 90:17 <b>outlining</b> 51:22 <b>Outlook</b> 68:14 <b>outset</b> 29:16 <b>outside</b> 22:15 23:10 63:4 71:25 151:8 <b>outsource</b> 125:16 <b>outsourced</b> 7:15 <b>outsourcing</b> 7:12 <b>outstanding</b> 18:24 51:9 <b>overall</b> 7:21 <b>overnight</b> 62:5 <b>oversee</b> 121:22,24 <b>overseeing</b> 123:7 <b>oversight</b> 122:5,6,7 <b>overview</b> 6:7	52:23 53:8,11 78:14 <b>pages</b> 151:14 <b>paid</b> 85:20 136:19 137:15 140:8 142:18 144:7 <b>pane</b> 9:2 11:5 12:3 20:3 37:5 <b>panel</b> 31:13,17 <b>paper</b> 35:3 96:19 <b>papers</b> 35:6 <b>paragraph</b> 117:7 117:13 <b>paralegal</b> 95:23 <b>paralegals</b> 91:25 95:17 96:3 97:24 98:12,14,15 128:8 <b>parameters</b> 22:6 112:8 134:23 <b>paraprofessionals</b> 97:5 <b>Pardon</b> 119:19 <b>part</b> 21:11 53:6 71:11 72:4 121:6 122:25 131:2 137:2 140:22 143:7,24 144:3,6 144:7,8,10 <b>participate</b> 30:21 30:24 <b>particular</b> 12:7 13:22 15:13 39:6 42:13 59:3 63:13 63:14 82:4 87:25 137:5 <b>particularly</b> 111:25 131:13 <b>parties</b> 70:23 149:7 <b>partners</b> 7:22 <b>party</b> 7:5 111:7 <b>pass</b> 88:4 133:20 <b>passed</b> 90:5 133:2 <b>pause</b> 18:15 114:13 134:6 <b>Pavilion</b> 1:16	<b>pay</b> 22:18 32:21 80:7,9 124:16 137:5,11 138:6,7 138:9,9,11,15,16 141:21 143:23 <b>payment</b> 15:19 17:9 37:21 38:8 39:14 40:5,8,9 46:11,11 48:2 84:18 143:17 <b>payments</b> 129:5 147:24 148:2 <b>payoff</b> 149:10 151:16 152:15 <b>payout</b> 36:18 51:10 <b>pays</b> 81:10,16 <b>pdf</b> 59:15 63:3,7 93:23 <b>Peggy</b> 2:7 <b>penalty</b> 60:11 <b>pending</b> 18:10,13 18:18,20 19:4,6 19:11 37:8,18 49:23,25 52:8,11 52:15 <b>Penn</b> 1:13 90:4,8 <b>Pennsylvania</b> 1:1 29:15 81:9 89:25 90:5 99:18 124:5 127:22,23 128:11 <b>penultimate</b> 146:9 <b>people</b> 58:17 67:24 71:11,15 82:18 90:9 96:12 97:21 97:23 98:5 99:13 100:24 128:2 150:4 <b>people's</b> 33:24 <b>percentage</b> 8:14 <b>perception</b> 35:22 <b>perfectly</b> 118:5 <b>perform</b> 92:6 101:23,25 119:7 <b>performed</b> 40:3 41:10 <b>performing</b> 26:9	26:13 101:15 <b>period</b> 15:12 43:23 46:23 51:25 79:19 <b>periodically</b> 34:18 <b>perjury</b> 60:12 <b>permanent</b> 48:5,9 53:18 66:8 <b>person</b> 26:8,11 35:24 47:20 59:17,18 60:4 105:2 135:9,15 <b>personal</b> 127:10 146:25 <b>personally</b> 103:24 127:4 <b>personnel</b> 95:21 96:4 127:25 <b>person's</b> 43:11 <b>perspective</b> 19:25 20:10 37:4,14 42:4 49:18 50:3 51:13 52:8 56:2 57:24 58:6 65:24 122:23 148:14 <b>pertain</b> 65:4 <b>pertaining</b> 10:21 11:18 12:5 36:18 45:25 55:9 <b>Philadelphia</b> 1:7 1:14,22 27:23 128:10 <b>phone</b> 11:16 23:21 23:24 41:3,6 44:11,14,21,25 45:7 47:6 59:23 67:16 75:22,23 105:23 106:20 141:20 <b>pick</b> 23:21,24 44:21 47:6 59:22 75:22 105:23 106:20,21 141:19 <b>picking</b> 27:19 44:14 <b>picks</b> 67:9 81:5	<b>piece</b> 34:11 130:9 151:24 <b>pieces</b> 34:17 35:2 <b>place</b> 14:18 34:17 39:17 49:10 58:25 69:25 74:16 82:7 88:20 100:21 <b>plan</b> 117:21 121:23 <b>play</b> 92:3 131:15 <b>plays</b> 54:14 <b>Plaza</b> 1:13 <b>please</b> 4:5 37:21 38:8 50:3 59:16 88:20,23,23 89:2 113:15 119:4 <b>POC</b> 14:8 34:20 60:19 <b>POCs</b> 51:11 <b>point</b> 6:16 7:6 11:23 44:8 64:5 82:21 97:7 130:16,24 142:24 149:4 151:9,10 151:12 <b>pointed</b> 70:18 <b>pointing</b> 93:7 <b>policy</b> 55:6,15 101:8 105:17 106:5 <b>poor</b> 138:4 <b>pop</b> 18:3 36:15 50:9 <b>pops</b> 41:21 <b>popular</b> 54:8 <b>portal</b> 68:18 77:14 <b>portfolios</b> 7:18 <b>posed</b> 76:7 <b>position</b> 90:12 <b>positions</b> 99:15 <b>positive</b> 146:14 <b>possible</b> 75:7 <b>post</b> 67:15 <b>post-petition</b> 37:21 38:8 <b>potential</b> 32:6
--	---	---	--	---

54:16	<b>presume</b> 139:19	117:17	63:24	72:9,14 74:15
<b>practical</b> 31:4	<b>pretend</b> 56:13,17	<b>proceed</b> 25:7 87:17	<b>processor</b> 95:23	78:22 90:16
<b>practice</b> 89:24	<b>pretty</b> 33:3 101:11	<b>proceeded</b> 22:5	98:20	107:17 113:6
90:10 91:21,23	111:5	89:16	<b>processors</b> 96:3	114:2,3,5,7
<b>preamble</b> 101:10	<b>prevent</b> 14:18	<b>proceeding</b> 76:18	97:25 98:13,17	117:14,19 148:25
<b>preceptor</b> 102:6	25:10 69:25	102:15 130:5	98:18 105:21	149:2
<b>precisely</b> 149:4,5	<b>prevented</b> 147:15	151:2	128:9	<b>provided</b> 8:4,13
<b>precludes</b> 70:22	147:17	<b>proceedings</b> 3:24	<b>produce</b> 50:25	9:20 38:2,2,10
<b>prefer</b> 29:11 31:9	<b>prevents</b> 13:22	4:10 12:16 93:16	<b>produced</b> 3:25	39:21 86:12
32:16	<b>previously</b> 20:9	148:22 153:6	93:15,22 147:11	108:17 115:19
<b>preference</b> 29:25	37:13 50:2 56:7	<b>process</b> 8:4,7,16,23	<b>product</b> 84:7	116:9,11 117:2
<b>prejudice</b> 4:24	58:6 89:16	9:2 10:8,22 11:4	<b>production</b> 5:8	119:13 141:5,9
<b>prejudiced</b> 5:4	<b>pre-approve</b> 27:22	12:3,9 13:16,24	93:25	<b>provider</b> 71:5,9,10
<b>prepare</b> 117:23	<b>pre-authorize</b>	14:18 15:13,15	<b>professional</b> 114:9	<b>providers</b> 68:23
130:4	27:18	15:16,16,21	<b>programmed</b>	<b>provides</b> 6:16
<b>prepared</b> 4:21	<b>pre-filtered</b> 50:4	16:21 17:8,15,23	29:14 35:25	10:11,21 12:12
87:17	52:11	17:24 18:4,11	<b>progress</b> 54:19	52:23 57:8 66:10
<b>prescribed</b> 137:25	<b>pre-made</b> 27:4	20:2,3 24:5,23	<b>projection</b> 48:14	75:6 119:5,11,20
<b>present</b> 32:5	<b>price</b> 83:17	25:5,6,7,8,10	50:20	<b>providing</b> 10:13
101:20 149:3	<b>primarily</b> 103:5	29:4,14 30:12,13	<b>projections</b> 48:10	66:5 72:6 92:6
150:16	<b>primary</b> 101:14	30:17 32:14,22	<b>promoted</b> 99:15	<b>pull</b> 48:4
<b>presentation</b> 6:12	<b>prime</b> 10:16	36:19 37:4,5	<b>prompts</b> 56:21	<b>pulled</b> 34:25 51:3
6:13,13,25 7:2	<b>print</b> 58:8 61:17,19	43:20 48:11 51:7	<b>proof</b> 12:17,18,20	<b>purpose</b> 71:13
9:17,18 12:23	66:6	52:9,13,18,21	13:2 17:6,8 34:19	137:2
13:20,21 14:16	<b>printed</b> 53:19 75:8	53:24 54:15,17	35:7,10 59:15	<b>purposely</b> 106:23
14:17 17:19,20	94:18 124:25	54:25 55:2,6 56:3	62:19 129:17	<b>purposes</b> 103:13
19:21,22 24:12	<b>prior</b> 27:17 92:16	56:9 57:5,13,14	130:4,7,8,15,17	<b>pursue</b> 101:13
24:13 36:6,7	130:5 131:7	57:25 61:9 64:23	130:21,23 131:5	145:12
45:19,20 47:10	<b>privilege</b> 67:5,13	74:25 75:2,11,19	131:6,7,12,19	<b>push</b> 26:25 35:24
47:11 48:7,8,13	68:2 74:10	77:10 80:4 82:4	132:6,20	46:12
48:14 50:5 51:5,6	<b>privileged</b> 75:18	84:8 96:7,12 99:4	<b>proofs</b> 58:18 59:19	<b>pushes</b> 26:17,21
55:20,21 57:4,5	76:13	99:24 100:19	59:25 60:9 132:9	<b>put</b> 15:14,23,24
61:4,5 64:21,22	<b>privileges</b> 76:11	101:17 102:2	<b>proper</b> 118:5	16:14,25 17:9
74:13,14 75:5,6	<b>probably</b> 18:16	117:22,23 121:22	<b>properly</b> 104:19	18:25 23:14 30:5
78:3,4,21,22	31:12 62:10 91:3	121:23 122:13	<b>property</b> 11:9	34:3 47:7,24
91:11,12	95:23 100:23	123:8 124:19	<b>proprietary</b> 82:25	55:14,18 59:2,5,6
<b>presentations</b> 50:6	127:21,23 146:11	143:16 146:14	<b>prorated</b> 13:3	60:4 71:6 99:4
<b>presented</b> 151:6	<b>problem</b> 5:2 21:6	<b>processed</b> 44:3	<b>protected</b> 76:15	103:14 127:19
<b>preset</b> 26:18	25:9 86:4 88:16	<b>processes</b> 7:3 8:10	<b>protection</b> 117:22	140:9 146:14
<b>president</b> 20:19	88:17 94:6 96:2	34:24 36:20	<b>protracted</b> 81:22	147:18 148:2,3
28:14,16 59:4	107:19 132:8	51:12 53:7 58:17	146:2	148:12
90:13	144:13	73:6,22,23 79:25	<b>proved</b> 99:14	<b>putting</b> 15:25 21:4
<b>presiding</b> 98:25	<b>procedure</b> 10:4	80:2,3 85:7,11	<b>proven</b> 99:17	132:9 147:15
<b>press</b> 14:5 118:9	106:11	100:22,23 139:18	<b>provide</b> 29:3 30:2	<b>P.A</b> 1:13
<b>pressed</b> 14:6 83:3	<b>procedures</b> 101:8	<b>processing</b> 2:1 6:2	32:15 37:21,23	<b>P.C</b> 2:2 90:11
<b>presumably</b> 24:9	114:4 117:12,16	28:9 49:20 55:16	38:8 56:19 68:25	<b>p.m</b> 1:8 86:22,22



**Q**  
**qualifications** 99:11 100:11  
**qualifies** 98:22  
**quality** 33:18,23  
34:2,5,17 35:5,17  
**question** 9:5 12:14  
18:16 23:9 26:13  
33:25 37:23  
39:16 42:2,11,15  
42:16 68:7,8,15  
69:13,18,24  
70:11 71:2 75:10  
79:10 92:20 98:9  
103:12,20 111:9  
111:11 113:13,15  
118:5,19,22  
119:4,24 120:21  
121:15 122:11,20  
133:5,18 135:6  
136:16  
**questions** 23:23  
63:20 64:10  
71:17 76:7 79:5  
89:18 100:3  
103:8 108:24  
122:17,21 127:18  
134:10 146:10  
**queue** 10:23 11:24  
11:24 12:11,12  
14:7 19:25 24:16  
24:21,22,24 25:7  
37:8,10 42:25  
45:23 46:2 47:16  
49:20,22,24 52:4  
52:10,11 55:22  
56:4,4,7,12 58:3  
58:3  
**queues** 24:17 50:15  
**quick** 54:15 79:5  
**quickly** 51:8 57:6  
94:18 144:7  
**quite** 67:15 99:25  
118:20 123:9  
124:11  
**quote** 51:22

**quotes** 51:10,10  
**R**  
**R** 4:2 29:21 153:1  
**raise** 15:4 36:10  
44:19,23 88:20  
**raised** 45:11 47:20  
**ranks** 11:14  
**rate** 129:11 133:24  
**rates** 31:18  
**reach** 29:8  
**react** 43:17  
**read** 78:20 97:22  
108:11,12 117:12  
123:11 136:15  
137:24 139:22  
**reading** 118:13,14  
138:17  
**reads** 30:15 67:12  
**ready** 30:12 134:12  
**realize** 4:8  
**really** 21:9 28:10  
40:23 46:19  
68:22 70:6,8,11  
71:12 77:22  
80:12 88:5 90:25  
91:18,21 95:24  
96:11 101:14,23  
102:3 104:10  
106:5 108:13,14  
108:19 124:10  
125:4 128:8  
132:10 135:6  
145:22 146:10,22  
146:24 147:3,13  
147:19,21  
**reason** 5:13 13:13  
15:17 18:4 35:24  
36:16 49:7 51:25  
59:3 87:24  
**reasonable** 117:23  
**reasons** 105:22  
**reassess** 138:8  
**recall** 94:17 112:16  
**receipt** 12:10 56:10  
**receive** 14:8 19:13

29:16 53:3 81:6  
**received** 4:18  
36:19 149:11  
**receives** 80:4 96:8  
**receiving** 8:5  
**recess** 86:17,22  
**recipient** 65:21,22  
**recipients** 65:2  
**recipient's** 65:24  
**recollection** 116:3  
117:9  
**reconciliation** 7:5  
**reconvened** 87:2  
**record** 8:21 24:4,8  
48:6 50:19 66:17  
68:20 75:13 76:3  
86:5,6 88:24 89:3  
89:14 148:10,12  
152:20,21  
**recorded** 3:24  
50:23,24  
**recording** 3:24  
153:5  
**records** 24:9 53:18  
**RECROSS** 3:2  
**red** 14:17 19:3 25:8  
39:2,2 46:3 47:20  
**REDIRECT** 3:2  
**redo** 13:17  
**redone** 92:24  
**reduces** 65:18  
**redundant** 40:13  
**REED** 2:5  
**refer** 7:15 25:23  
**referral** 7:21 8:15  
8:24 9:22,25  
11:21 12:10  
25:10 29:13 81:5  
81:10,13 96:8,16  
96:25 97:2,5,6,11  
97:13 100:6  
112:2  
**referrals** 8:8,9,11  
8:18 10:4 27:20  
35:23 96:14  
97:14 98:6

**referred** 7:10 12:5  
85:25 95:7  
105:17  
**referring** 25:19  
113:13 115:21  
**refers** 25:20  
**refresh** 117:9  
**refuse** 57:23 90:8  
**regard** 46:19 90:21  
112:24  
**Regardless** 14:23  
**region** 43:3  
**regions** 53:23  
**regular** 30:10,25  
34:25  
**reinstated** 51:10  
**relate** 16:16 87:15  
**related** 10:12  
67:23 83:8  
**relating** 133:2  
**relationship** 7:12  
7:24 92:5 109:16  
109:17 114:12  
139:15 140:7  
145:9  
**relationships** 7:11  
11:2  
**relatively** 101:6  
**release** 23:23  
**relevance** 70:8  
130:7 140:5  
**relevant** 7:6  
130:10  
**relief** 15:18 16:11  
16:15 17:7,9  
61:14 81:10,14  
97:4 103:2 112:2  
117:22 138:7  
**rely** 91:25 112:11  
**remain** 45:23  
109:3  
**remains** 37:18  
72:21  
**remember** 23:3  
29:17 45:16  
**remind** 7:3

**reminder** 44:23  
**reminders** 44:4  
45:13  
**reminding** 55:22  
**removed** 19:23  
24:22  
**removes** 66:7  
**REO** 90:20 99:20  
**repeated** 44:9  
52:21  
**repeatedly** 145:17  
**reply** 66:6  
**report** 11:25 24:17  
43:12 45:20  
151:15  
**reported** 7:22  
101:22  
**reports** 14:25  
25:14 32:9 50:25  
51:3  
**represent** 91:3,5  
110:6  
**representation**  
35:17 90:19  
117:15  
**representative**  
103:16  
**represented**  
109:19 127:9  
**representing** 28:25  
**represents** 12:6  
24:23 46:3  
**reproject** 48:19,25  
**reprojecting** 49:5  
**reprojection** 49:3  
49:17,22 50:2,7  
50:10,11,12,16  
50:16  
**reprojections**  
48:25 49:19,21  
49:25 50:2  
**request** 14:24 18:9  
18:9 19:7,8 20:8  
24:15,15,16 29:9  
36:22 37:3,12,17  
37:17 39:25

40:13 48:10,18	<b>requirements</b> 7:17	51:5 55:20 57:4	93:13 94:14 95:3	122:24
48:24 49:15,17	11:4 13:10 18:8	61:4 64:21 74:13	95:9,12,17,20	<b>save</b> 18:9 36:22
50:10 51:7,8,14	20:12,16 36:21	75:5 78:3,21	96:5,21 97:17	47:15 49:12
51:15,24 52:2,4	50:11 114:6	<b>retain</b> 52:13	98:16 99:8 101:3	53:16 124:16
52:14,21 53:3	119:13,23	<b>retrieve</b> 54:15	102:12 103:21	<b>saved</b> 10:3 14:7
54:17,18,22 55:7	<b>requires</b> 31:19	<b>retrieved</b> 56:11	104:14,17,25	18:10 36:23
55:10,23,24 56:4	35:21 54:15	<b>return</b> 53:17	105:4 108:18,19	53:17,19
56:7,9,10,12,16	90:21 114:11	<b>review</b> 5:3 18:23	110:8 112:4	<b>saving</b> 7:7
56:24 57:7,8,9,10	<b>reservation</b> 88:18	19:24 36:24 37:2	114:17 115:3,12	<b>saw</b> 5:10 38:25
58:16 59:2,5,13	<b>reserve</b> 88:3	49:23 61:17	116:16 123:6	42:9 91:18
61:5 72:20 96:18	<b>residential</b> 90:22	74:18 102:12,19	126:3 132:16	<b>Saxons</b> 91:2
97:2 103:18	<b>resolution</b> 7:17,21	126:19	134:21 135:14	<b>saying</b> 12:15 16:24
117:20 119:6,9,9	25:9 39:3 41:17	<b>reviewed</b> 11:21	136:21 137:14,17	16:25 17:16 23:7
120:9 127:3	47:12,19	14:22 18:12	137:20,22 138:21	27:3 31:21 35:7
144:20 148:3	<b>resolve</b> 47:23	25:11 34:3 36:25	138:22 139:13,24	39:6 41:14 45:4
<b>requested</b> 18:11,19	<b>resolved</b> 36:25	48:15 49:15	140:3 141:4	45:13 47:7 58:22
19:24 21:15	39:3,6,17,18	52:25 53:20	144:11,12,17,19	61:18 70:22
34:18 45:21	41:11,12,16,20	55:24,25 58:15	145:19 146:22	72:24 73:22 74:5
46:19 47:13	41:22 45:24 46:7	60:3 102:3 105:6	<b>rights</b> 65:6	74:6 82:14,17,18
48:15 49:13,15	46:9,10 47:14	136:11	<b>rigid</b> 77:4	85:22 90:7 97:10
57:15,18,21	54:17 132:15	<b>reviewing</b> 18:11	<b>rise</b> 86:23	98:5 104:18
101:21 109:24	<b>resolves</b> 151:24	108:16	<b>rises</b> 99:14	110:18 118:15
145:5	<b>resource</b> 78:23	<b>reviews</b> 14:23 65:7	<b>Road</b> 1:17 89:8	121:13 123:13,14
<b>requesting</b> 54:23	<b>respect</b> 95:12	<b>revisited</b> 10:6	<b>role</b> 54:14 73:25	123:21,22 130:2
55:5,8 106:20	<b>respond</b> 52:7	<b>re-projection</b>	74:9	130:24 132:8
<b>requestor</b> 36:7	<b>responded</b> 51:8	48:17	<b>row</b> 12:6 24:23	<b>says</b> 12:25 13:11
<b>requestor's</b> 52:15	53:5	<b>re-projections</b>	40:21 46:3	22:8 23:16 33:9
52:16	<b>responding</b> 51:23	81:23	<b>rules</b> 63:15	38:11 40:16 88:6
<b>requests</b> 14:13	<b>response</b> 44:15	<b>Rich</b> 128:12 145:7	<b>run</b> 32:9 33:5 43:3	100:11 113:16,18
20:5 24:18 37:7	52:13,17 53:2	<b>right</b> 4:6 9:14	43:5,7,12 100:24	114:21 115:19,24
49:22 51:11,19	68:5,7	10:17 13:11 17:5	<b>S</b>	116:17 123:12,14
52:11,12 56:6	<b>responsibilities</b>	19:12 20:18 21:8	<b>S</b> 4:2	125:5,7,10
57:23 58:5,5	12:13,16 14:23	21:11,20 23:5,7	<b>safely</b> 53:23	136:18 137:24
117:23	25:12	23:10 24:10 30:7	<b>sale</b> 129:8	138:10 141:11
<b>request's</b> 54:19	<b>responsibility</b>	32:2 35:9,14,15	<b>sales</b> 129:5,6	142:7,10,11
<b>require</b> 63:15 72:6	43:24,25 60:15	38:12 39:20	<b>samplings</b> 34:24	147:8 148:16
72:11 80:24	64:2	40:10 41:11 43:6	<b>san</b> 61:23	150:13,13
114:11,11 121:14	<b>responsible</b> 56:5	46:6,13,22,25	<b>sanctionable</b>	<b>scan</b> 63:3
<b>required</b> 33:22,23	58:4,17 113:3	47:3 52:23 60:14	144:22	<b>scanned</b> 94:18
34:19 36:21	<b>rest</b> 19:11	60:19 62:4 63:25	<b>sanctions</b> 123:5	96:19
51:10 56:17 57:6	<b>restrictions</b> 70:4	64:6,9 71:6 76:8	<b>sat</b> 107:23 135:5	<b>scenario</b> 72:17
57:12 58:3 61:9	<b>Resume</b> 6:25 9:17	76:16,19 77:24	<b>satisfaction</b> 104:24	<b>scenarios</b> 14:20
98:25 101:24	13:20 14:16	82:23 85:23 86:2	<b>satisfied</b> 99:5	<b>schedule</b> 87:15,25
118:11 137:12	17:19 19:21	86:7 88:20 89:23	100:21 102:5	114:14,22 136:23
<b>requirement</b> 13:4	24:12 36:6 45:19	90:12,16 91:7,16	<b>satisfy</b> 103:18	137:3 140:5,12
13:5 63:8,11	47:10 48:7,13	92:11,13,18		140:13,15,22,23

142:16,19	42:13 45:25 46:2	sent 8:16,17 27:8	112:12 117:11	32:19,20 59:17
<b>scheduled</b> 48:24	47:24 49:14,16	30:13 46:12 47:5	119:14,21 120:11	59:18,19,21
49:11	50:2 52:11,17	47:7,13 52:4	120:17 124:10	61:21,22 63:2,3
<b>schedules</b> 87:23,24	55:23 56:6 58:5	53:20 58:10	125:2 139:18	79:21 94:12
111:10,12,18	65:4 66:4 69:14	61:16 62:17	142:22 150:4	135:20 136:8
<b>school</b> 90:2,5 97:25	71:10,16 72:10	64:23 65:2,9 66:9	<b>sets</b> 110:24 111:2	<b>signature</b> 57:5,8,10
<b>scope</b> 82:24	73:6,21 74:25	66:11 73:19	112:5 117:9	57:11,14,17,21
<b>screaming</b> 91:22	90:25 97:12	141:17	120:8 137:6	58:2,16,19,22
<b>screen</b> 8:20 9:24	100:24 112:16,24	<b>sentence</b> 117:12	142:8	59:6 60:23 61:6,9
10:17 11:6 38:25	115:19 123:2,12	<b>separate</b> 109:12	<b>settle</b> 21:17 22:19	63:14 93:18 94:9
41:8,8,9 43:18	126:4 131:13	110:12,14 111:12	27:5	95:9,11 135:22
49:14,21 52:10	132:25 135:23	111:18 140:4	<b>settlement</b> 22:6	136:2
58:2 75:11	136:2 138:11,20	<b>sequentially</b> 18:17	23:12,13,17	<b>signed</b> 32:12 57:7
<b>screens</b> 126:19	139:3 144:14	<b>servers</b> 32:6	<b>shaking</b> 17:4	58:10,15,23,24
<b>scroll</b> 53:13	147:8 150:7,8	<b>service</b> 3:25 34:19	<b>share</b> 53:24	58:24 59:2,4
se 16:4	<b>seeing</b> 59:21	44:6 68:23 71:4,9	<b>shareholder</b> 90:14	60:10,16,18
<b>sealed</b> 67:18	112:16 129:20	71:10 72:15,19	<b>shed</b> 135:6	62:14 123:14
<b>search</b> 78:15	132:20 138:5	72:21 74:2 85:17	<b>sheriff's</b> 129:8	135:21 136:3,9
<b>seat</b> 6:22 87:4	<b>seek</b> 20:6	110:16 124:15	<b>she'd</b> 128:17	136:10 141:3
<b>seated</b> 4:5 87:2	<b>seen</b> 51:23 57:21	144:6	<b>shoot</b> 47:6	<b>signing</b> 143:24
88:23 109:3	62:23 126:6,7	<b>servicer</b> 7:10,25	<b>short</b> 86:16	<b>signs</b> 60:11,17,19
<b>seats</b> 6:18	150:17 152:18	8:5,13,21 10:20	<b>shorter</b> 124:11	63:7
<b>second</b> 6:17 18:15	<b>sees</b> 20:9	19:15 21:5 25:17	<b>shots</b> 8:20	<b>silence</b> 150:24
24:20 37:19	<b>select</b> 11:13 51:20	25:20 54:4 56:8,9	<b>show</b> 5:23 12:11	151:8
40:12 45:22	54:10 57:11	56:12 57:7 58:4,8	13:13 33:6 38:20	<b>silly</b> 152:10
95:12 139:8	65:12	58:16 60:22	39:4 41:10 43:13	<b>similar</b> 4:25 10:20
147:15	<b>selected</b> 8:2 18:3	61:16 63:10	43:19 45:8 50:4	94:23 120:14
<b>second-hand</b>	25:3 36:15 50:9	65:16 80:5,6	52:12 66:2	<b>simplifies</b> 7:4
102:25	53:2,13 54:6	<b>servicers</b> 8:11	124:21,25 129:17	<b>simply</b> 14:4 17:20
<b>section</b> 10:19	<b>Selecting</b> 54:2	35:18 80:8 91:5,6	129:24,25 132:21	51:20 55:3 56:14
115:19 116:14	<b>selection</b> 74:24	<b>servicer's</b> 7:25 8:6	147:20	56:16,18 57:15
117:7,13	<b>Selectra</b> 91:20	11:3,8,12 50:11	<b>showed</b> 41:23,24	66:4
<b>sections</b> 10:18	<b>selects</b> 36:12 55:3	55:25 56:2 57:22	126:9	<b>single</b> 6:16 7:5
<b>secure</b> 68:12,17,18	74:23	57:24	<b>showing</b> 14:25	<b>sir</b> 111:6 112:18
73:17	<b>send</b> 23:16 30:10	<b>services</b> 2:2 6:2 7:7	25:14 52:14	113:9 116:2
<b>secured</b> 77:14	30:25 31:19 48:2	69:2 72:8,11,23	93:15	117:13 119:16
97:19	59:15,18,20 62:3	91:13 101:15	<b>shown</b> 41:25	120:6
<b>securely</b> 64:23	64:24 65:10,10	114:3,5 115:19	<b>shows</b> 9:19 13:16	<b>sit</b> 120:4 146:8
<b>security</b> 10:11,14	65:15,21 67:7,8	116:9,11 117:2	14:13 18:10	148:8
65:5 70:20,21,22	67:11,22 72:23	119:7 121:7	38:24 50:9	<b>site</b> 42:6
<b>see</b> 4:19 5:22 6:23	83:25 84:22	137:6	<b>side</b> 21:13 22:20	<b>sitting</b> 20:18
10:17 11:7,12,14	143:17	<b>Servicing</b> 86:14	26:5,5 42:10 46:6	<b>situation</b> 14:19
12:6 13:22 14:2,8	<b>sending</b> 60:22	<b>session</b> 4:5	49:21 52:10,23	19:7 48:16
16:22 19:4 24:22	<b>sends</b> 85:17 151:15	<b>set</b> 7:20 13:16 22:6	57:25	<b>six</b> 105:25
27:3 29:6 36:23	<b>senior</b> 101:16	78:10 81:4 102:4	<b>SIGMUND</b> 1:9	<b>sixty-seven</b> 106:13
37:9,13 39:22	<b>sense</b> 76:17 122:17	109:21 110:2	<b>sign</b> 29:9 31:6	<b>skip</b> 124:14,16

slow 125:5	17:4 18:7,25 56:5	76:3 103:2 112:2	52:3 53:2 55:10	7:13,18 8:21 10:5
slower 9:8,10,13	57:13 58:3 74:20	117:22	submitted 50:3	11:23 12:15
smart 74:3	74:25 99:2	stays 48:5 68:19	56:7 57:20 58:6	13:17 22:15,22
Smith 2:5 59:4	specifically 17:13	140:11	submitting 51:14	23:11,14,22 24:4
smoothly 100:24	55:6 129:14	step 13:25 14:8	subscribe 83:16	27:25 29:3,10
software 30:15	specified 10:19	16:11 48:22,25	subscribed 79:7	30:6,6,14,15,22
sole 42:23 90:14	54:4	49:6,6 54:23 55:8	subsequent 94:12	31:6,8,10 32:10
96:17	specs 19:11	55:11 56:11,11	94:14,16	32:12,18,18 33:6
solution 7:13	spell 88:24	56:15,20,21	subsidiaries 28:24	33:11,14,16 41:5
114:22	spend 74:11	57:15 58:7,11,12	substantially 87:14	41:20 42:24 43:9
Solutions 7:16 91:8	spin 146:14	144:18	116:24	43:12,15,16 45:4
somebody 21:22	Spitzer 1:13 89:15	steps 14:5,10 15:21	sub-topic 78:12	45:10,12 47:4
21:24 22:2,8 34:3	split 29:20	16:2,2,23 19:23	successfully 54:12	53:19 56:24,25
41:15 59:3 60:11	spreadsheet 29:5	37:2 43:20	sufficiently 103:12	58:20,20 61:25
67:9 71:8 72:4	29:13	STERN 1:16	suggested 69:23	64:8,25 65:3
82:14 86:4	SR 1:19	STEVEN 1:15	suggestion 109:25	66:17,25 67:24
124:15 132:4	staff 7:14	stipulation 117:22	Suite 1:14,17,21	69:10,14 70:15
149:25	staffed 97:6	stood 104:12	2:3,6	70:24 71:14,15
somebody's 32:17	stamp 34:22	stop 9:6 15:19 16:3	summarize 92:12	71:16 72:5 73:8
something's 59:22	stamped 93:17	16:6,8,9 18:4,12	summarizing	73:16 75:15,24
somewhat 73:25	stand 107:16,22	20:5 24:20 37:7	92:10	75:25 76:3,10
soon 24:2 43:9	standard 78:9	43:19 45:22	superseded 115:4	77:12,17 78:12
sooner 147:10	133:23,24	55:12 145:20	supervising 99:11	79:6,14 80:5 81:9
sorry 28:6 81:11	standards 101:24	stopping 36:19	support 61:13	81:12 84:3 85:3,6
92:19 110:5	112:11 114:3,8,9	stops 15:16 16:3,7	80:17,24	85:9 91:14 92:2
117:25 146:2	117:10,11,16	16:20	supports 149:18	96:9,15 97:12
sort 33:19 40:24	120:12 123:23,23	storage 84:5	suppose 129:6	103:16 104:13
42:10 44:16	124:4,7	store 53:23	supposed 23:15	107:24 108:5,21
50:22 70:3,4,4	stands 22:8 148:15	stored 10:10	43:14 74:5	110:7,15 111:8
104:16 106:3	start 19:24 33:11	stores 33:9	107:11 108:10	122:14 126:17,21
125:18	44:3,14 52:7	story 147:8	145:6	127:4,18,19
soul 88:2,6	started 82:7 84:10	straight 81:7	supposedly 9:4	130:22 132:10
sound 3:24 153:5	99:13,16 101:17	strain 94:3	sure 16:19 32:13	133:3 141:24
sounded 27:19	starting 93:17	strange 35:22	35:18 41:2 58:19	142:18 143:9
source 90:23	starts 6:6	Street 1:21 2:5	70:6,8 96:24	144:5 149:15
speak 105:19,23	state 8:14,15 31:16	Strike 128:19	106:17 114:25	152:18
108:3,4 140:25	31:19 43:2 88:24	structure 79:6	138:5 141:17	systemic 132:8
143:20 145:11	89:2,23 90:4,8	structured 60:3	143:12 145:3,4	systems 74:2
SPEAKER 116:18	95:13 106:12	students 97:25	surpassing 125:22	
speaking 22:14	113:10 124:4	stuff 76:23 92:23	surrounding 18:4	
speaks 112:20	131:2	subject 65:20	36:17 49:8	
113:8 118:3	statement 70:10	137:25 151:25	suspicious 59:22	
special 105:13	148:23	152:2	switch 35:20	
specialize 90:19	STATES 1:1,10	submission 147:22	sworn 87:11 88:19	
specific 8:13 11:24	status 10:22 11:8	147:22	88:22	
12:6 16:2,16,25	stay 15:18 16:11,15	submit 51:7,15	system 4:11 6:8	

**T**

t 114:6 153:1,1  
tab 8:25 12:3 20:2  
37:5 49:20 52:10  
56:3 78:7  
table 103:14  
tag 92:4

<b>take</b> 6:20 10:6,15 10:24 12:8 13:24 15:3 26:14 33:15 36:8 39:17 42:12 50:21 52:6 57:22 65:8,22 67:12 80:23 86:16 87:3 88:15 89:20 96:17 124:5 126:19 147:6 149:6,24	<b>Tela-322</b> 116:19 <b>telephone</b> 92:4 <b>tell</b> 19:16 23:24 35:19 40:18 92:8 132:21 137:5 138:6 143:2 148:9 149:16 150:8 152:14 <b>telling</b> 12:18 107:24 <b>tells</b> 16:7 27:5 47:20 65:25 106:18 141:15,16 <b>ten</b> 95:15,16 97:4 110:18 124:3 <b>term</b> 21:3 25:17,19 25:20,23 37:20 <b>terminate</b> 101:23 <b>terms</b> 12:16 35:17 50:21 102:25 108:7 <b>testified</b> 102:16 135:24 149:4 <b>testifies</b> 103:15,16 149:16 <b>testify</b> 103:3,3 134:18,25 141:9 <b>testifying</b> 115:5 123:11 142:3 <b>testimony</b> 87:9 102:20 104:5,7 104:11 108:11,13 127:7 130:4 137:8 140:10 145:18 146:24 148:19,20 <b>Texas</b> 150:3 <b>Thank</b> 5:5 13:19 24:11 86:14 87:20 88:23 89:10 109:2,5 111:13,17,22 144:11,19 <b>theirs</b> 117:18 <b>they'd</b> 23:22 58:8 <b>thing</b> 23:22 40:21	59:20 81:22 88:6 98:2 104:17 107:20 121:2 142:13 147:14 <b>things</b> 13:12 17:2 18:17,21 24:4,5 27:4,16 31:19 34:20 35:4 39:18 41:13 68:25 72:22 98:25 100:24 104:21,22 124:8,9 134:15 134:16,22 135:8 135:17 142:6 143:14,20,21,21 145:24 148:9 <b>think</b> 4:7 5:14 6:18 6:22 12:24 13:14 16:13 18:16 22:13 25:20 26:2 26:3,3 27:16 31:11 38:5 39:16 41:3 43:13 44:16 44:22 46:13,15 58:25 59:18,22 60:12 62:24 63:21 67:6,15 68:6,8 70:10,16 70:17,18,19 71:3 72:18,19,25 73:7 76:6,10,14 77:21 82:5,24 92:9 95:16 98:23 99:10 100:15 104:20,22 106:2 106:5,9,22 111:10 112:9,9 114:9,9,12 115:6 115:8 120:3 121:11 122:2,10 122:23 125:4 126:11 127:7 129:3,4,4 130:2 131:9 132:5 133:9 134:19,21 135:23 136:13	138:16 139:15 140:13 142:11,24 143:22 144:17 145:16 146:13,21 149:9,10,10,11 149:14,25 150:2 150:5 151:17 152:4 <b>thinking</b> 76:11 100:5 <b>thinks</b> 132:6 <b>third</b> 7:5 9:11 70:23 <b>thirty</b> 51:12 81:6 84:25 85:7 107:25 <b>thought</b> 69:13 134:12 135:2 150:20 151:3 <b>thousand</b> 22:19 27:6 83:25 139:4 <b>three</b> 27:24 29:15 29:23 42:12 97:16 101:18 125:9 <b>three-quarters</b> 122:13 <b>throw</b> 151:21 <b>tickler</b> 44:3 <b>tie</b> 57:13 68:14 133:10 <b>tied</b> 10:11 11:7 54:24 56:20 58:12 68:19 75:2 84:13,18,18 149:22 150:8 <b>till</b> 83:24 <b>time</b> 5:3 7:7,19,21 10:6 12:13,25 13:2,8 21:4 29:10 32:7 35:21 43:23 44:8,24 45:12 46:2,5 48:3,11 49:5,24 50:21 52:14 54:9 79:19 82:5 83:11 84:2	92:4 93:3 96:10 101:11 105:24 107:25 119:12,14 119:14,21 120:8 120:11,17 124:10 124:11,18,19,20 124:22,23,24,24 125:2,6,22 126:7 126:9,10,19 145:2,24 146:9 146:15,20 149:6 149:7 <b>timeline</b> 7:16 10:19 12:4 48:24 111:25 112:6 <b>timelines</b> 23:15 112:13,17,24 <b>times</b> 40:21 50:21 59:19 63:3 81:23 81:23 125:19 135:5 146:9 <b>Tina</b> 128:12 <b>title</b> 28:12 55:5,15 99:20 <b>today</b> 22:9 34:16 77:23 91:2,11,18 97:12 135:10 <b>today's</b> 14:3 <b>told</b> 17:3 22:21 27:19 104:13 106:9 139:17 <b>tool</b> 8:18 11:19 14:17 17:25,25 18:5 25:8 36:13 36:13,14 37:4 49:2,2 51:18,20 53:10,25 54:24 54:25 57:11 65:11 74:22 124:21 <b>tools</b> 7:3 65:11 <b>tool's</b> 17:24 <b>top</b> 10:17 11:6 78:14 99:14 <b>topics</b> 78:11 <b>total</b> 96:2
---	--	--	--	--

**totally** 135:15  
**touched** 29:15  
**touches** 35:24  
**tough** 126:12  
**toughest** 126:14  
**trace** 124:14,17  
**track** 49:16 54:19  
55:7 57:14 66:11  
71:20  
**tracked** 57:8  
**train** 33:22  
**trained** 32:21  
97:21 98:6,7,9  
100:20 104:23  
**trainer** 34:7  
**training** 6:14 32:22  
32:23 33:2,9,10  
33:13,15,16,20  
33:23 78:16,19  
98:19 99:3 101:9  
**transcriber** 153:3  
**transcript** 1:9 3:25  
102:19 153:4  
**transcription** 3:25  
**transcripts** 102:13  
**transferred** 130:21  
130:22  
**transmits** 119:9  
120:15  
**transpired** 103:2  
104:12  
**Travis** 2:2  
**treat** 113:25  
**tree** 11:5,5  
**tried** 147:25  
**trouble** 45:17  
**true** 146:7 153:4  
**trump** 117:18  
**Trust** 50:5,6  
**trustee** 1:19,20  
68:7 89:18 99:25  
105:8,9 108:23  
122:16 145:11  
146:20,22 149:2  
**Trustees** 79:23  
**truth** 126:3

**try** 64:7 92:8 99:23  
118:16  
**trying** 21:17 28:23  
31:22 34:14  
68:21 69:2,12  
71:3,6,13 72:10  
72:16 73:14,24  
74:3,8,11 83:5  
98:2 104:21  
105:9 118:7,21  
121:17 123:16  
125:21,25 131:9  
131:11,13,21  
132:20 133:10  
136:15 139:15  
140:13,14 142:7  
145:16 146:3,3  
**Tuesday** 145:14  
**turn** 4:12 7:4 55:6  
57:13  
**turnaround** 54:21  
**twelve** 28:24  
**twenty** 100:16,23  
102:10  
**twenty-five** 83:13  
100:24 102:10  
**twice** 40:5  
**two** 27:3 33:7,7  
37:10 40:21  
41:12 42:13  
73:18 77:17 84:4  
98:24 101:14  
108:17 124:17  
125:9 136:18  
138:19 140:4  
**TX** 2:3  
**type** 41:21 62:25  
65:16 75:2  
139:22  
**types** 7:11 8:9 54:7  
63:20 64:12  
69:19 73:5  
**Typewriter** 91:20  
**typical** 31:13 32:14  
**Typically** 8:10  
**typing** 26:11 65:17

**U**  
**U** 115:13,14  
**Udren** 1:13 3:3  
4:17,20 27:23  
35:19 76:9 77:23  
87:3,9,10 88:14  
88:22,25 89:1,13  
89:15,17,20 90:1  
90:10,11,17 91:1  
92:1,15,16,18  
93:1,3,4,18 94:1  
95:1,13,21 96:1,8  
97:1 98:1 99:1  
100:1,3 101:1  
102:1,25 103:1,3  
103:6 104:1,25  
105:1 106:1  
107:1 108:1  
109:1,5,8 110:1  
111:1 112:1  
113:1 114:1  
115:1,2 116:1  
117:1 118:1  
119:1 120:1  
121:1,14,18  
122:1 123:1,6  
124:1 125:1  
126:1,16 127:1  
128:1 129:1  
130:1,4,5 131:1  
132:1,3 133:1  
134:8 135:16  
145:17 147:25  
149:15 152:12  
**Udren's** 88:9 118:4  
129:23 140:10  
**Uh-huh** 80:21  
**ultimate** 26:12  
**ultimately** 7:7  
**umbrella** 69:10,22  
**Um-hmm** 9:7  
66:14 110:2  
111:3  
**unable** 105:18  
**unavailable** 31:9  
**uncontested** 128:8

**understand** 4:6  
17:5 25:22 28:12  
30:6 31:25 33:17  
61:3 64:7 68:21  
69:11,12 71:7  
73:13,14,21,24  
74:3,8,12 83:5  
88:5,18 96:10  
99:5 106:4  
111:22 119:16  
120:13 125:21  
128:13,17 131:21  
132:2 133:22  
136:22 137:23  
139:5,14,16  
140:22 144:4  
147:9 148:24  
**understanding**  
5:17 73:24 79:13  
91:10 118:4  
119:8,10,23  
120:6,7,10,16,18  
120:22 121:5  
137:4 151:4  
**Understands**  
100:18  
**understood** 100:21  
100:22 103:11  
108:8,9 140:21  
**unfettered** 73:4  
**unfortunate** 146:8  
**unfortunately**  
101:22 105:25  
126:22 146:2  
151:23  
**UNIDENTIFIED**  
116:18  
**uniform** 111:5  
**unique** 7:17 73:25  
**UNITED** 1:1,10  
**unresolved** 45:14  
45:14,14  
**untrue** 105:20  
**upcoming** 11:20  
**update** 12:4 57:6  
**updated** 94:17

**updates** 9:20 10:4  
66:2  
**upload** 34:19 54:10  
56:13,14 61:18  
61:25 62:4 84:3,4  
84:4  
**uploaded** 10:2  
39:10 46:12 48:2  
53:7,8 54:7,9,20  
56:17 57:17,18  
62:15,16  
**uploads** 61:10 63:7  
**upsetting** 130:11  
**upstairs** 5:11  
**uptake** 84:6  
**urgently** 63:4  
**USA** 1:16  
**usage** 85:21  
**use** 7:9 18:5 21:3  
25:17 26:4 29:2,7  
29:10,11 31:9,15  
32:7,16 33:16  
37:6 75:12,19  
76:5 79:8,23,24  
83:7,18 84:3  
91:13,14 100:22  
110:6,16,17  
**user** 9:22 11:11  
12:4 13:23,25  
14:5,9 15:6 17:22  
18:2,3,9 20:3,9  
20:13,14,15 21:3  
24:13,14 25:4,5  
25:20,23 26:4,4,5  
26:10 36:11,12  
36:14,16,22 37:9  
37:11,13,15  
42:11 46:4,7  
47:13,15 48:18  
48:25 49:3,6,19  
49:22,23,24 50:7  
50:10,12 51:7,15  
51:18,20,21 52:3  
52:8,12,16,19,20  
53:3,10,15,20,22  
54:4,10,11,13,24

55:2,3,7,9,10,11	<b>varies</b> 80:19 99:12	<b>W</b> 1:9	71:18 84:13	<b>we've</b> 11:21 34:23
56:3,4,8,9,15,18	<b>various</b> 9:24 15:25	<b>Wachovia</b> 140:12	101:19 118:10	68:16 91:11 98:5
57:6,9,10,12,15	53:14 83:15	<b>wait</b> 4:23 87:12	122:15 123:11,12	<b>whatever's</b> 21:4
57:24 58:2,3,6,8	126:19	131:24	139:17 140:9	62:12
65:4,10,11,13,13	<b>vary</b> 26:21 98:21	<b>walk</b> 37:2	147:5,11,21	<b>Wilentz</b> 1:13 89:15
65:15,18,24,25	100:12	<b>walked</b> 39:23	148:21 152:11	<b>willing</b> 137:5 138:6
66:4,6,10,11	<b>vendor</b> 8:2,8,12,16	<b>walking</b> 48:17	<b>ways</b> 48:20 134:23	138:10
69:19,20 70:2,3	8:22 14:21 25:11	<b>wander</b> 12:4	<b>web-based</b> 7:6	<b>Wilmington</b> 2:6
74:18,23,24	25:16,18 26:6	<b>want</b> 5:19 13:2,12	84:11	<b>window</b> 9:23 18:3
77:16,16 78:14	72:13 73:20	13:15 20:3 28:2,4	<b>weeds</b> 103:9	20:9 24:14 25:3
84:7	79:23,24 80:11	29:16,17,22,25	<b>week</b> 14:11 45:5	36:16 37:13 49:4
<b>users</b> 6:16 7:3 9:3	<b>vendors</b> 8:4 11:23	30:24 31:15	107:22,22 125:8	50:9 51:21 52:14
9:21 10:13 11:13	48:10,12	34:21 43:3 67:2	148:8,8	53:13 54:3,10,12
13:21 14:24 20:5	<b>vendor's</b> 9:3 11:8	77:23 83:18,20	<b>weeks</b> 92:4 124:16	57:12 65:12 66:5
20:7,11 24:22,24	11:13	83:21 86:15 88:4	124:17 125:9,9	66:7 74:23
25:12 36:23	<b>versus</b> 47:19 60:20	102:24 103:4,5	<b>Wells</b> 110:6,11,16	<b>WINSTEAD</b> 2:2
42:18 43:13	131:7,12	105:24 114:9,18	<b>went</b> 4:20 33:20,21	<b>Wisdom</b> 5:25 9:7
44:10 53:9,17	<b>vice</b> 20:19 28:14,16	116:4 118:9,16	67:24 102:2	9:16 12:19,22
56:5 58:4 64:24	59:4	120:4 121:3	124:18,24 129:5	14:15 15:9,13,16
65:2,3,7,17 66:3	<b>VIDEO</b> 6:13 7:2	124:8,8,9 125:10	144:21 145:5	15:20 16:3,7,20
66:9 70:12,14,19	9:18 13:21 14:17	127:16 130:7,8	<b>weren't</b> 99:23	16:23 21:22 22:3
72:6 74:16 75:9	17:20 19:22	130:19 132:25	145:14 147:24	33:3,6,14 38:22
78:5,8,11,23	24:13 36:7 45:20	135:13,13 144:20	<b>Westlaw</b> 83:10	38:24 41:11,14
<b>user's</b> 10:23 12:9	47:11 48:8,14	146:13 147:13	<b>we'll</b> 4:24 5:6 6:7	41:17,19,25
42:3	51:6 55:21 57:5	148:15,16,16,17	10:6,24 13:17	50:23 51:3 57:2
<b>uses</b> 76:10 81:9,12	61:5 64:22 74:14	152:14	19:24 23:12	<b>wish</b> 9:10 14:3
<b>usual</b> 80:10	75:6 78:4,22	<b>wanted</b> 50:20 76:2	36:17 37:3 48:21	17:24 20:11
<b>usually</b> 32:14	<b>view</b> 9:22 14:25	76:12 101:13	49:5,17 52:7,11	37:15 53:15,16
112:11	20:7 25:4,13	103:10 106:24	57:23 59:18	54:5 65:10,13
<b>utilize</b> 14:19 74:17	37:11 46:5 49:24	107:3 145:17	65:23 124:16	107:11 121:9
78:6 103:19	50:7,8,8 53:15	147:18 149:6	138:7 147:10	<b>wishes</b> 37:11
<b>utilized</b> 79:7	64:5 69:10,22	<b>wants</b> 62:15	148:2,2	<b>witness</b> 88:22,25
104:16	74:24 76:14	120:25 121:2,4	<b>we're</b> 4:8 15:19	89:4,6,8 92:19
<b>utilizes</b> 7:13	103:15 135:16	144:20 145:11	21:12 26:4 28:23	97:8,14,17,20
<b>Utilizing</b> 78:14	<b>viewed</b> 10:3 25:2	149:2	33:3 34:14 35:6,6	98:4,11,13,18,21
<b>U-docs</b> 53:11 58:9	50:17 53:7 76:20	<b>warranted</b> 74:11	40:12,19 46:15	100:7 101:2
<b>U-D-R-E-N</b> 88:25	<b>views</b> 107:15	<b>wasn't</b> 5:8 16:19	59:20 63:6 64:20	102:9 106:11,17
<b>U-15</b> 3:6 115:15,15	<b>Villanova</b> 90:5	83:2 101:21,23	72:14 74:8 79:15	106:22 107:3,6
<b>U.S</b> 1:19,20,20	<b>violating</b> 134:16	122:14,15,16	87:17 92:17	108:3,7,10
105:8,9 108:23	<b>vision</b> 4:7	<b>watched</b> 101:25	100:3,4 104:18	111:13 112:20,23
145:11	<b>vis-a-vis</b> 110:17	<b>watching</b> 25:21	114:25 118:3	115:3,6,8,12
<hr/>	131:15 132:3	59:21	124:9 125:5	119:25 120:4
<b>V</b>	152:12,12	<b>way</b> 21:18,21	131:5 133:10	123:25 125:20,24
<b>valiantly</b> 145:16	<b>volunteer</b> 152:5	29:12 32:13 45:8	138:6,11,11	126:3 127:15
<b>valid</b> 51:25	<hr/>	54:15 57:8 58:20	143:23 145:25	131:22,24 133:4
<b>variations</b> 54:8	<hr/>	58:22 66:11	147:5 150:3,4	133:7,19 134:8
	<b>W</b>			

135:23 136:2,4,6 136:8,13,17,21 137:4,11,14,17 137:20,22 138:4 138:10,13,20,22 139:2,6,9,11,13 139:24 140:3,17 140:20,25 141:4 141:8,12,15,17 144:19,25 145:4 145:19,22 146:7 149:2 <b>witnesses</b> 3:2 146:18 <b>woman's</b> 129:7 <b>wondering</b> 34:4 <b>Woodcrest</b> 89:8 <b>word</b> 26:4 39:8,22 <b>words</b> 21:25 22:4 33:19 40:5,13,20 112:2 128:2 130:6 <b>work</b> 6:4,15 8:5 11:25 14:9 16:8,9 16:13 17:3 25:7,7 42:24 55:22 56:22 64:17 67:19,23 92:7 98:24 99:11 104:2,4 122:3,9 133:12 <b>worked</b> 10:24 17:10 75:3 100:15 102:9 <b>working</b> 7:11,12 8:22 13:22 14:10 27:7 68:16 82:7 95:14 114:25 <b>workload</b> 10:23,25 11:24 12:2 14:7 <b>works</b> 24:17 33:6 42:25 64:8 <b>worried</b> 19:5 <b>worst</b> 5:22 <b>wouldn't</b> 22:13,23 41:7 45:7,7 67:6	106:24 107:20 129:2 139:19 <b>writing</b> 152:7,9 <b>written</b> 109:12,14 118:3 147:22 148:13 <b>wrong</b> 4:7 13:7 59:22 65:16 132:17,18 <hr/> <b>X</b> <hr/> x 3:1 13:2 <b>XYZ</b> 27:23 <hr/> <b>Y</b> <hr/> <b>Yahoo</b> 67:17,23,23 68:3 73:8 <b>yeah</b> 4:6 6:24 17:17 19:19 21:6 26:12 28:3,13 30:23 31:23 32:4 33:3 34:7 60:21 61:3,12,15 62:7 62:13 69:11 73:3 73:15 77:8,13 78:20 82:18 96:10 97:14 98:18 100:9 103:22 108:25 109:4,4,10 112:14 117:8,16 118:6 120:19 121:25 123:3 125:10 128:22 129:15,21 133:7 133:10,14 134:21 134:21 135:23 136:7,7 139:2 144:17 146:20 147:18,18 150:19 151:4 <b>year</b> 80:23 <b>years</b> 84:10,10 100:16 102:10 124:3 <b>Yep</b> 77:2	<b>yesterday</b> 94:2 <b>York</b> 1:17 <b>young</b> 105:25 106:2,21 107:19 107:20 147:2,5 <b>younger</b> 94:5 <hr/> <b>Z</b> <hr/> <b>zip</b> 29:24 <hr/> <b>#</b> <hr/> <b>#07-15385</b> 1:5 <hr/> <b>0</b> <hr/> <b>00316</b> 93:17 <hr/> <b>1</b> <hr/> 1 55:8 57:15 92:16 115:19 116:14 117:7,13 10/10 48:24 49:10 10/2 12:18 105,000 27:11 109 3:3 1100 2:3 111 89:8 1200 141:21 1201 2:5 1250 129:16 133:25 13 1:3 92:17 93:3 130 96:2 97:5 1300 139:6 140:2 14 92:18 93:4 115:2 140 139:23 15 115:6,7,8 1500 2:6 19046 1:18 19102 1:14 19107 1:22 1964 90:4 1967 90:5,6 19801 2:6 <hr/> <b>2</b> <hr/> 2 1:13 18:16 56:11	<b>2:24</b> 1:8 <b>2001</b> 4:18 94:11 <b>2005</b> 94:16,21 95:6 115:25 <b>2007</b> 94:17 95:6 <b>2008</b> 1:7 153:10 23 1:7 <b>23rd</b> 148:3 <b>261</b> 1:17 <b>27</b> 153:10 <hr/> <b>3</b> <hr/> 3 14:10 56:11,15 <b>3rd</b> 151:15 152:17 <b>31st</b> 94:11 <b>322</b> 116:18,25 <b>324</b> 138:18 <b>341</b> 117:20 <hr/> <b>4</b> <hr/> 4 14:10 48:22,25 49:6 56:21 <b>4:01</b> 86:22 <b>4:25</b> 86:22 <b>410</b> 1:17 <hr/> <b>5</b> <hr/> <b>5th</b> 149:11 <b>5:30</b> 152:10 <b>500</b> 1:21 <b>53103</b> 144:10 <hr/> <b>6</b> <hr/> <b>600</b> 2:2 <hr/> <b>7</b> <hr/> <b>75,000</b> 22:20 23:13 23:18,25 27:9 <b>77002</b> 2:3 <hr/> <b>8</b> <hr/> <b>8th</b> 115:25 <b>833</b> 1:21 <b>850</b> 141:22 <b>89</b> 3:3 <hr/> <b>9</b>	<b>910</b> 1:14 <b>92</b> 3:6
--	---	---	---	----------------------------------